VOLUME XLI NUMBER 4

Massachusetts Law Quarterly

DECEMBER, 1956

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THIRTY-SECOND REPORT OF THE JUDICIAL COUNCIL OF MASSACHUSETTS

Equity Practice — Rule-Making — Liability for Atomic Accidents — Uniform Gifts to Minors Act — Protecting Our Land Recording System — Obsolete Mortgages — Dower and Curtesy — Defence of Accused Persons — Peremptory Challenges of Jurors and Other Matters

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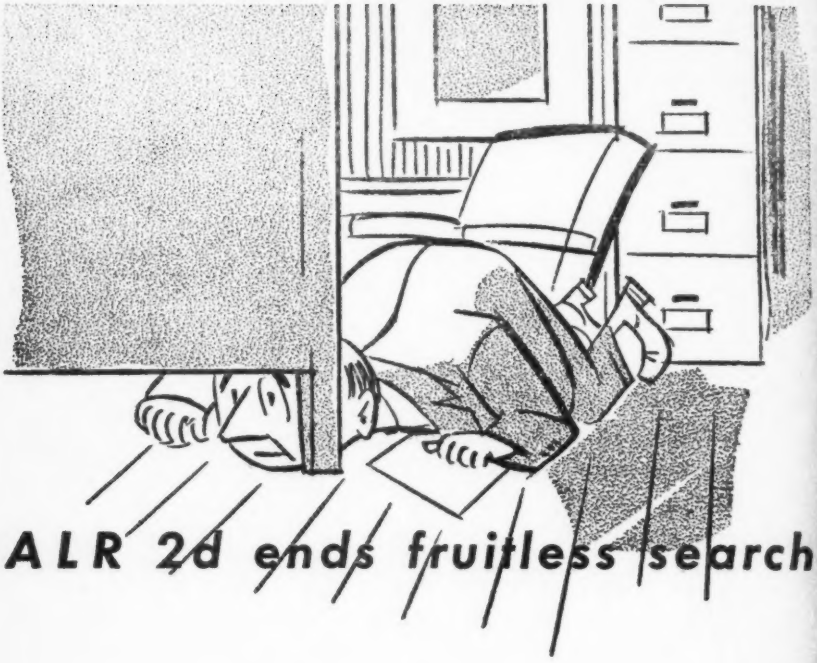

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Massachusetts Law Quarterly

Volume XLI **DECEMBER, 1956** **Number 4**

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ADMINISTRATIVE COMMITTEE OF THE DISTRICT COURTS

(Circular Letter)

The statistical part of this letter appears in the Judicial Council Report, pp. 70-73. The rest will appear in our next issue.

MASSACHUSETTS BAR ASSOCIATION NOMINATING COMMITTEE

Chosen by the Board of Delegates

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JAMES H. FITZGERALD, Brockton
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THOMAS M. A. HIGGINS, Lowell
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WELCOME TO THE "BOSTON BAR JOURNAL"

The December issue of the "Bar Bulletin," published by the Boston Bar Association (since 1924), announced the passing of the "Bulletin" to be succeeded by the "Boston Bar Journal" and as we go to press the first issue of the "Journal" has appeared. As we had something to do with the beginning of the "Bulletin" when the late George Nutter was President we may write something about the history of bar publications in Massachusetts in our next issue. Meanwhile we extend a welcome and congratulations to the "Journal" on its first birthday.

F. W. G.

ASSIGNMENT OF COUNSEL TO REPRESENT UNPOPULAR DEFENDANTS

A Resolution of the Board of Delegates of the Massachusetts Bar Association

Following the report of a Committee to consider and report on the criticisms of lawyers, Board of Delegates of the Massachusetts Bar Association adopted the following

RESOLUTION

Whereas, the laws of England have provided since 1695 for the appointment of counsel for a prisoner accused of treason, if he were unable to retain counsel and requested such appointment, and constitutional provisions in the various states adopted since 1776, and the provisions of the Sixth and Fourteenth Amendments of the Constitution of the United States, require the Courts to appoint counsel for indigent defendants in all cases in the United States District Courts and in many cases in the State courts; and

Whereas, Canons 4 and 5 of Professional Ethics of the American Bar Association provide: "A lawyer assigned as counsel for an indigent prisoner ought not to ask to be excused for any trivial reason, and should always exert his best efforts in his behalf. * * * Having undertaken such defense, the lawyer is bound, by all fair and honorable means, to present every defense that the law of the land permits, to the end that no person may be deprived of life or liberty, but by due process of law;"

Now, therefore, be it—

Resolved, that the Board of Delegates of the Massachusetts Bar Association commends the members of the bar of the Commonwealth who have served, or are serving, on assignments by Massachusetts courts, both State and Federal, as counsel for persons accused of crime, often in unpopular causes and at great personal sacrifice to themselves, as following the highest traditions of the legal profession as officers of the court, and the Board recalls Canons 4 and 5 to the attention of the members of the Bar of Massachusetts, urging them thoughtfully to consider and observe the admonitions contained or implied in those Canons that attorneys serving as assigned counsel for indigent prisoners are bound from the moment of their engagement until final judgment, both in and out of court, faithfully and honorably to comply with the rules of court, the Canons of Professional Ethics, and the highest traditions of the American Bar; and be it

Further Resolved, that the foregoing resolution be brought to the attention of the citizens of the Commonwealth by the Association's Public Relations Committee, to the end that the public may be informed of the contribution such members of the bar are making to the administration of justice.

Back Row: Mr. Wait; Justice Whittemore; Justice Williams; Justice Ronan; Justice Spalding; Justice Counihan; Justice Cutter. *Front Row:* Chief Justice Flynn, Rhode Island; Chief Justice Wilkins; Mr. Schneider; Former Chief Justice Qua; Chief Justice Kenison, New Hampshire; Justice Cox, retired.

THE DINNER IN HONOR OF FORMER CHIEF JUSTICE QUA

The Association tendered a dinner in honor of retiring Chief Justice Stanley E. Qua on October 30, 1956 at the Statler Hotel, Boston as a mark of appreciation for his thirty-four years of distinguished judicial service to the people of the Commonwealth. President Joseph Schneider presided.

The entire Supreme Judicial Court joined with us at this dinner and the first picture of the new court is on the opposite page. The Chief Justices of two neighboring states, Honorable Edmund W. Flynn of Rhode Island and Honorable Frank R. Kenison of New Hampshire were guests of the Association.

Mr. Richard Wait, former president and chairman of the Committee, Chief Justice Kenison, Chief Justice Flynn, and our new Chief Justice Wilkins, all spoke with great appreciation of the guest of honor. The former Chief Justice said he did not seem "to know the man they had talked about" and then spoke impressively of the work of the court, its position in the profession and his views about courts of last resort in the light of his experience.

On the same evening a similar dinner was being tendered retiring Chief Justice Raymond E. Fellows by the Maine Bar Association.

Back Row: Mr. Wait; Justice Whittemore; Justice Williams; Justice Ronan; Justice Spalding; Justice Counihan; Justice Cutter. *Front Row:* Chief Justice Flynn, Rhode Island; Chief Justice Wilkins; Mr. Schneider; Former Chief Justice Qua; Chief Justice Kenison, New Hampshire; Justice Cox, retired.

VANDALISM IN A LAW LIBRARY

In the Social Law Library, the other day, we had occasion to consult the Volume of "Land Court Decisions" by the late Hon. Charles T. Davis. It is a much used book not easily replaced except by accident in a second-hand book store. The library has two copies. Some "vandal" of a lawyer had cut out of one copy about ten pages. Fortunately he was considerate enough to put them back loose. We were informed by the librarian that some one had also cut out an entire article from a volume of the Michigan Law Review.

We are all familiar with the press stories of young hoodlums who break the windows or otherwise damage churches, or school houses, but it hardly seems a part of the professional qualifications of a lawyer to deliberately damage the professional tools of his professional brethren at the bar and on the bench. He deserves to be spanked literally or figuratively, but, perhaps, in this merciful humanitarian era it is sufficient to suggest the possibility of a permanently distressing conscience of which lawyers are, at least, supposed to know the meaning and to remind him (if he reads this) that it would be the act of a gentleman to hunt up another copy or advertise for one through some book store and return it to the library. He could return it anonymously.

F. W. G.

(One of the proprietors of the Social Law Library)

THE THREAT TO EQUITY DISCUSSED BY THE JUDICIAL COUNCIL

On page 14 of the 32nd report of the Judicial Council for 1956 which appears in this issue reference is made to a proposed constitutional amendment of Article 15 of the Bill of Rights.

The Protest of the Council

The Council then continues:

"We respectfully protest against this proposal which would 'hamstring' all equity and make Massachusetts a backward state in the administration of justice. We know of no such provision anywhere. It would reverse the law as carefully explained by the Court in Parker v. Simpson, 180 Mass. 334 and confuse and obstruct the whole field of modern equity recognized in Section 1 of Chapter 214. It would put Massachusetts back 100 years in the administration of justice."

These are strong words used by judges and practitioners of long experience. What are they about?

Article 15 of the Massachusetts Bill of Rights provides

THE PRESENT 15TH ARTICLE ADOPTED IN 1780

"In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherways used and practised, the parties have a right to a trial by jury; and this method of procedure shall be held sacred, unless, in causes arising on the high seas, and such as relate to mariners' wages, the legislature shall hereafter find it necessary to alter it."

THE PROPOSED (HOUSE 1050)

"PROPOSAL FOR A LEGISLATIVE AMENDMENT TO THE CONSTITUTION PROVIDING FOR A TRIAL BY JURY IN ALL CONTROVERSIES CONCERNING PROPERTY AND IN ALL SUITS BETWEEN TWO OR MORE PERSONS, *including equity.*

ARTICLE OF AMENDMENT

"Part The First—A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts. Article XV is hereby annulled and the following is adopted in place thereof:

Article XV. In all controversies concerning property and in all suits between two or more persons, *including equity*, the parties have a right to a trial by jury; and this method of procedure shall be held sacred."

The Senate and House Journals of April 26th record a committee report "Ought to pass" and the filing of the report in each House. The proposal was not submitted to a joint convention of both Houses. We have not noticed it in the list of measures introduced for the 1957 session. Whether it can be lifted from the files and submitted to a joint convention without further hearing we do not know, but in connection with the request of the legislature for a report by the Judicial Council on equity practice, the Council submitted in its report the "protest" quoted above.

In view of the extreme seriousness of the proposal after the long struggle of thoughtful men during almost 200 years of prejudice and injustice we think the matter and the Council's comment should be called to the special attention of the profession.

We may discuss this subject again in a later issue. F.W.G.

ATOMIC ENERGY IN THE FIELD OF LAW

An address at a recent luncheon of the Hampden County Bar Association.

by

JOHN F. MORIARTY *of the Holyoke Bar.*

The impact of atomic energy in the field of law has actually been felt only during the past two years. Prior to that time atomic energy was a government monopoly and practically all work in the field was devoted to its destructive potentialities.

Two years ago last August, however, Congress passed the Atomic Energy Act of 1954. The act was designed to open the door to the development of peaceful applications of the atom, and for the first time private enterprise was not only allowed but was in fact encouraged to participate in the development of the nuclear art. In the report of a special committee of the American Bar Association this act was characterized as one of the most important pieces of legislation ever adopted by the United States Congress.

It is perhaps not too much of an exaggeration to say that this act not only opens the door to a new industry, but also opens the door to what may be a new way of life for most of us. Needless to say, such a sweeping change brings with it many legal problems which are unique to the field, and which may have a substantial effect on legal thinking in the future.

The 1954 act by its own terms raised a number of unique problems in a number of fields of law.

Administrative Law

The field of Administrative Law for example, has never before seen a statute which vested such absolute discretionary control in an administrative agency as has been vested in the AEC.

Patents

In the field of Patent Law the Act contains certain new and unique features. For one thing there is a clause which provides for compulsory licensing, and another clause which provides that "any invention or discovery . . . made or conceived under any contract, sub-contract, arrangement, *or other relationship* with the commission. . . . shall be deemed to have been made or conceived by the Commission. . . ." This clause has already created a great deal of concern in the industry. It has been said that it puts every invention in the field under a cloud, *since* even a routine communication with the Commission could be construed as "some other relationship with the Commission."

Property Law

"In the field of property law the Act contains a provision which introduces a brand new concept into our law. Section 52 of the Act provides that 'all right, title and interest in or to any special nuclear material within or under the jurisdiction of the United States, now or hereafter produced, shall be the property of the United States . . .' 'Special nuclear material' by definition is plutonium, uranium enriched in isotope 233 or isotope 235, or any other material which the Commission, pursuant to certain provisions, determines to be special nuclear material. When you consider that these materials are capable of being either discovered or manufactured, and consider further that by force of law private ownership of the materials is not only unlawful but actually impossible, you will see that we have had introduced into our law a completely new concept of property rights."

Tort Liability

The points I have just mentioned are somewhat specialized in nature and are probably of only academic interest to the average lawyer. Far more important, I think, is the impact that atomic energy is likely to have on the law of tort liability. This impact has already been felt in a sense, in that the uncertainties which presently exist in the field are a major obstacle to the development of the industry.

Status of Art, etc.

Before getting into this particular problem I think it is important to say a few words about the present status of the industry, the policy of the government with regard to the development of the art, and the controversy which is presently raging over that policy.

1. The Need

In the first place it seems to be universally conceded that a rapid development of the peacetime applications of atomic energy is very much in the public interest. We have now, within our grasp, a vast new source of power. This source has come to us at a time when the demand for power has reached an all-time high with no end in sight, and when the exhaustion of conventional sources of fossil fuel from known reserves is foreseeable. The urgency of the situation is very well pointed up by the present crisis in the Near East and the effects of that crisis in Europe. It seems clear that the economic stability of most countries, including our own, depends in large measure on the availability of fuel as a source of power. Under those circumstances it seems imperative that we have a source of power which cannot be hindered or cut off by foreign developments beyond our control, or by the simple exhaustion of the supply.

2. Probability of

In the second place it seems also to be universally conceded that the use of nuclear energy as a source of power is not only technically feasible, but will undoubtedly in the near future be economically feasible, at least in high fuel cost areas. At the moment the costs of nuclear fuels are high, due to limited production and lack of market. The probabilities are that these costs will decrease steadily as the art develops. The costs of conventional fuels on the other hand, are spiralling upward with no end in sight. This upward trend is bound to continue as conventional fuels become more scarce. The probabilities are that as nuclear power production develops, its costs will soon fall below the costs of conventional power production.

3. The Problem

The problem, however, is in getting the program started. As I stated before, the Atomic Energy Act of 1954 made it possible for private industry to obtain the information and materials necessary for development. There are, however, many economic obstacles to overcome.

For example, it is undoubtedly true that the first unit of anything, be it an automobile, an airplane or a nuclear power plant, costs far more than subsequent copies. Each individual is therefore understandably reluctant to be the one to assume the exorbitant and initial costs.

For another thing, it is presently uncertain as to just what type of reactor will prove best suited for power production purposes. At the present time there are eight known types of reactor under study in the United States and each of these types has numerous adaptations. Individual power companies naturally hesitate to risk large amounts of capital in a reactor which may prove to be of an inferior type.

The object therefore is to somehow overcome the economic obstacles and to give the nuclear power industry the impetus it needs to get started.

4. Present Government Policy

The present policy of our federal government is to leave the solution of this problem to private industry with some limited governmental assistance. This policy is quite different from that which has been pursued in England and in Russia. In those countries the government has undertaken to build the first few plants and thereby to assume the risks and the initial high costs, in the interests of getting the industry started.

It seems clear that the policy of our government has resulted in delay of the development of nuclear power in this country. About six weeks ago the first English nuclear power plant went into

operation at Calder Hall in England. In this country, on the other hand, we are still a full year from the completion of our first plant. It has been claimed that the United States is currently behind England, Russia, and perhaps Canada in the peaceful development of nuclear power.

5. Gore Bill

The policy of leaving the program in the hands of private industry has been severely criticized and is the center of the greatest controversy in the nuclear field. There are many people in the government and in the industry who feel that the United States should follow the same policy being pursued abroad and do the initial work necessary to get the program started. In the last session of Congress, Senator Albert Gore of Tennessee introduced the controversial Gore Bill, which would have provided for the construction of a number of power reactors by the government at government expense. This bill passed the Senate but was defeated in the House of Representatives. The controversy is still raging, but for the moment at least this country is committed to the policy of reliance on private enterprise.

6. Reactor Demonstration Program

The Atomic Energy Commission has attempted to implement the program within the framework of existing policies through its Reactor Demonstration Program. Broadly speaking, this program contemplates the construction and operation of nuclear power plants by existing utilities, with assistance from the federal government in the form of payments for research and development information obtained from such construction and operation. Up to the present time there have been two phases of the program initiated. In the first phase the Commission invited proposals from interested parties for the construction of large nuclear plants and in the second phase of the program the Commission invited proposals for the construction of small nuclear plants.

The Commission received five proposals under the first phase of the program including the proposal of New England's Yankee Atomic, and received seven proposals under the second phase of the program, including the proposal of the City of Holyoke.

At the present time, a number of these proposals have been accepted as a basis for negotiation but only one contract has actually been executed and none of the proposed plants are actually under construction.

7. Necessity of Planning

Any company contemplating the construction of a nuclear plant under the Demonstration Program naturally must consider very carefully all potential costs which are likely to be involved either

in the construction or operation of the plant. A venture into a new field necessitates very careful planning, and at least some assurance of protection against major liabilities.

8. Insurance Problem

This brings me to the major point of my discussion. One of the greatest obstacles which those companies who are considering participation in the program have encountered is the problem of potential liability from accident and the problem of how to insure against it. This problem is broadly referred to in the industry as the "insurance problem". At this time the problem is still unsolved and remains as a major roadblock to nuclear development.*

9. Hazards

To appreciate the problem it is necessary to have some understanding of the hazards involved. To begin with, a nuclear reactor is not a bomb. The danger of damage to third parties from an explosion is practically non-existent. However, the materials contained in a reactor are of necessity highly radioactive. The greatest danger lies in the possibility that an incident will cause the release of these materials into the atmosphere, with resulting contamination of persons and property over a wide area. Assuming, as we must, the worst possible conditions it is conceivable that the damage from radiation could run into enormous figures. Furthermore, the nature of radiation damage is such that all of the effects are not necessarily felt immediately. For example, it is perfectly possible that in some instances radiation damage would first manifest itself years after exposure in the form of cancer or other degenerative disease, and it is even possible that the effects might first become apparent in succeeding generations.

10. Danger of Incident not great

Fortunately the danger of a major nuclear incident is not great. Up to the present time the government and those private concerns which have been involved with nuclear energy have achieved a remarkable record for safety. The AEC insists and will continue to insist that all installations be designed against "maximum credible incident." What experience we have had to date seems to indicate that the possibility of a major nuclear incident is quite remote. No matter how remote, however, the possibility continues to exist and must be guarded against.

11. Speculation on rules of law

The insurance industry in this country has been making a major effort to cope with the problem.

In evaluating their position in the field the insurance companies

*An extended article on "Torts and the Atom—The Insurance Problem" appears in the 1956 Fall issue of the Kentucky Law Journal (Vol. 45 No. 1).—Editor.

have had to speculate on what rules of law would be applied by the courts in the field of tort liability in the event of such a catastrophe.

A. Rylands vs. Fletcher

The best legal thinking at the moment seems to indicate that the courts would undoubtedly apply the doctrine of Rylands vs Fletcher and impose absolute liability on the operator of the plant regardless of proof of negligence.

B. Manufacturer Liability

It also seems quite possible that the courts might look beyond the operator and impose liability on the manufacturer of the plant under one of the various theories of manufacturer's liability. It is even possible that the doctrine of res ipsa loquitur would be applied in this field.

C. Corporate shield

It has been suggested too that courts might even look beyond corporate fictions in order to reach assets to satisfy claims resulting from a major incident.

12. Insurance Industry cannot meet problem

At the present time it seems apparent that with the existing rules of tort liability the insurance industry cannot possibly meet the problem without assistance in some form. Up to now there have been two major forms of assistance considered or contemplated.

13. Government Insurance

The first and most obvious solution perhaps would be a form of government insurance, paid for and financed by the federal government. It has been suggested that the private insurance companies should assume the burden to the greatest extent possible and that the government assume all risks over and above the limit that the private companies can reach.

The primary objection to this solution is that it brings the government into the field of competitive private enterprise. Nevertheless, it is expected that a bill calling for such a program will be introduced in the next session of Congress. However, it is also expected that the program will be introduced as a package tied together with the controversial Gore Bill calling for the construction of government nuclear power plants. It is known that President Eisenhower's administration favors an insurance program of some sort but is definitely opposed to the Gore Bill. Therefore, whether or not the insurance bill will pass this session of Congress, and if so in what form it will emerge are still matters of speculation.

Furthermore, at the present time no one has any idea as to what rates the industry will have to pay, either for the government insurance proposed or for the limited coverage to be provided by private insurance companies.

14. Limits on Liability

The second solution that has been suggested is some form of legislative limitation on liability resulting from a nuclear incident.

The objection to this solution of course is that it leaves the public without complete protection against damage.

The idea of limitations on liability seems to be particularly abhorrent to lawyers as a group. Most of the legal groups which have been formed to work on the problem have discarded this possibility almost without discussion.

Nevertheless, the concept of limited liability is certainly not new to our law. We are all familiar with the limitations involved in suits against municipalities, the states and the federal government. Limitations on liability in Workmen's Compensation Statutes are almost universal. Most statutes allowing compensation for wrongful death contain a maximum limit of liability, and it was surely lawyers who evolved the legal fiction of corporate entities for the very purpose of limiting liability in business relationships. As lawyers we are all familiar with the practical limitation of the financial responsibility of defendants.

It has been suggested that the atomic age can be compared to the industrial revolution. In the latter instance the law was very slow to adapt itself to the new era. The courts found it necessary, perhaps to protect infant industries, to evolve such doctrines as "assumption of risk" and the "fellow servant" rule. This, of course, eventually led to an intolerable situation in that it left the public virtually unprotected against industrial accidents until the advent of Workmen's Compensation legislation many years later. It has been suggested that a similar legislative program might be required to meet the needs of the atomic era.

The dilemma Summarized

To summarize briefly, it might be said that we find ourselves confronted by two conflicting public policies. On the one hand it seems imperative to develop our new-found source of power as rapidly as possible. On the other hand, it is certainly equally imperative to protect the public against the hazards involved. Somewhere there is undoubtedly a solution but at this time the exact form of the solution is not readily apparent.

Incidental problems

In addition to the overall problem there are many incidental problems which must somehow be resolved.

A. Statutes of Limitations

For example, present statutes of limitations are not adaptable to situations where the effects of injury may not be felt until years after exposure.

B. Conflicts of Laws

In the field of conflicts of laws there may be problems present in the event that a nuclear incident in one jurisdiction results in radioactive fallout in another jurisdiction.

C. Evidence

In the law of evidence, problems may be expected in that evidence essential to a claimant's cause of action may be classified as secret or confidential, and may therefore not be available for introduction in court. In such a situation a choice must be made between the public interest involved in protecting the classified information, and the right of the claimant to due process of law.

Work done to date

A great deal of effort has already been expended in meeting the legal problems involved in the coming nuclear age. The American Bar Association has appointed a committee to study the problem and this committee has been very active. Several law schools, notably Columbia and Michigan, have conducted forums to seek solutions to the problems involved.

On August 9th of this year Governor Herter approved an act establishing a Massachusetts Commission on Atomic Energy. One of the provisions of this act is to impose on a number of existing state departments and agencies the duty to study and to make recommendations for the enactment of laws or regulations relative to atomic energy.

I would like to suggest that it would probably be most appropriate for the Massachusetts Bar Association to form a committee to study the problem, and to work in cooperation with the newly authorized commission on the legal aspects of the problem. In this way the bar might well be able to contribute to what promises to be a new and better age.

PRIVATE PROPERTY—CAN CONGRESS TAKE IT ALL WITHOUT COMPENSATION?

Just how totalitarian have we become? And where are we headed? After reading Mr. Moriarty's address, perhaps, most of us will agree with Hamlet that

> "There are more things in Heaven
> and Earth Horatio
> Than are dreamt of in your
> philosophy."

A new challenge is presented to the thinking and "imagineering" of the legal profession. Mr. Moriarty says

"In the field of property law the Act contains a provision which introduces a brand new concept into our law. Section 52 of the Act

provides that 'all right, title and interest in or to any special nuclear material within or under the jurisdiction of the United States, now or hereafter produced, shall be the property of the United States. . . .' 'Special nuclear material' by definition is plutonium, uranium enriched in isotope 233 or isotope 235, or any other material which the Commission, pursuant to certain provisions, determines to be special nuclear material. When you consider that these materials are capable of being either discovered or manufactured, and consider further that by force of law private ownership of the materials is not only unlawful but actually impossible, you will see that we have had introduced into our law a completely new concept of property rights."

We have no intention of trying to be an alarmist; on the contrary we happen to be a chronic optimist as to our ability to "muddle through" things somehow or other if we "keep our shirts on." But a little anticipatory thinking by the bar of America seems called for as to some statutes or decisions *and their implications* which emerge from Washington under our constitutional form of government.

A few years ago during the controversy over the "Tide Lands" cases we expressed in these pages the view that the majority opinion in the California and Texas cases had "clouded the title" to all the upland in Massachusetts, where we have no oil, as well as in the other parts of the United States. We emphasized the importance in this connection of the frequently forgotten, or overlooked statement in the dissenting opinion in the Texas case of Justices Reed, Frankfurter and Minton, that

> "The needs of defense and foreign affairs alone cannot transfer ownership to an ocean bed from a state to the Federal Government any more than they could transfer iron ore in uplands from state to Federal ownership." (See 37 M.L.Q. No. 2, July 1952, p. 63)

The practical results of the majority opinions on the "historic boundaries" of the states were reversed by act of Congress but now Mr. Moriarty points out to us that Congress has undertaken to claim title by its mere legislative say-so, to materials found in the uplands in private ownership.

Now, of course, the government must anticipate atomic emergencies and exercise reasonable regulatory powers over nuclear materials to keep them out of hostile hands but to what extent can our Federal government—executive, legislative and/or (pardon the much despised literary fraction, but like a split infinitive it sometimes has its uses) judicial, change "the concept of property rights," as Mr. Moriarty suggests. If as to nuclear materials, how about the crops in Iowa or other things anywhere?

Let us not forget the ghost of the royal Governor Andros of Massachusetts in 1686 who attempted to declare all land titles invalid until he was arrested, and fired after the news of the abdication of James II, the last Stuart king. The new Province Charter of 1692 confirmed all the titles again.

One of the Five Herter Murals in the Massachusetts House of Representatives Depicting, "Milestones on the road to freedom in Massachusetts"

REVOLT AGAINST AUTOCRATIC GOVERNMENT IN MASSACHUSETTS, THE ARREST OF GOVERNOR ANDROS, APRIL 18, 1689

It has always been dangerous to live at all and it is somewhat ironical that in an era when most of us have been yearning, perhaps excessively, for "security" on paper, that life is becoming more dangerous than ever. Assuming that we are not blown to Kingdom Come (which may be the simplest solution), can we operate a constitutionally restrained government under atomic conditions of the future? We hope so and are inclined to believe so if we face the facts and think; but we do not pretend to know. Perhaps somebody else does. If so, please tell us where we are at and where we are headed as to the legal restraints of the human itch for power. Sooner or later somebody has to think things *through* to a balance.

If anyone fools himself into thinking that this is a "future" question for consideration, we call his attention to the fact which we heard of yesterday, that two private concerns are today exploring a Massachusetts farm for uranium. If they find it, who is

going to own it—the government or the record title holder whose ancestors or other predecessors may have had title since the Province Charter of 1692? There seems to be the basis for a first class law suit before the Supreme Court of the United States. Just what is going on in this country? Does this question go to the roots of our government or does it not? Don't hesitate to tell us we are foolish, but please state why.

F. W. GRINNELL.

LATEST TAX NEWS ON THE UNIFORM GIFT TO MINORS ACT

(Adoption of which is recommended by the Judicial Council)

As appears in the report in this issue the "subject matter" of two bills to provide for small gifts to minors which would not be made without legislative provision was referred by the legislature to the Judicial Council with a request for study and report. Similar legislation known as "the Model Act" had been adopted in 13 states. While the matter was under consideration the National Conference on Uniform State Laws reported a Uniform Act which was approved by the House of Delegates of the American Bar Association at its meeting in Dallas in August. After careful study and discussion of this draft the Council unanimously approved a law not inconsistent with the general purpose of uniformity among the states.

One of the questions involved related to taxation. The following informal report from the Treasury Department, submitted by Walter D. Malcolm, of the Massachusetts Commissioners, seems to answer the question and is, therefore, called to the attention of the profession.

Editor Massachusetts Law Quarterly—

Enclosed is a photostatic copy of an inter-office memorandum dated October 23, 1956 from the Acting Assistant Commissioner of Internal Revenue to Mr. Laurens Williams, Assistant to the Secretary of the Treasury regarding the Department's position on the income and gifts tax consequences on gifts of securities under the Uniform Act, together with a copy of a covering letter from Mr. Williams to Mr. Barton H. Kuhns, President of the National Conference of Commissioners on Uniform State Laws, with respect to this memorandum.

These papers would appear to settle satisfactorily the income and gift tax status of the Uniform Act.

WALTER D. MALCOLM

TREASURY DEPARTMENT
WASHINGTON

October 29, 1956

Barton H. Kuhns, Esquire
President, National Conference of
Commissioners on Uniform State Laws
First National Bank Building
Omaha 2, Nebraska

As I explained to you when I saw you in Omaha, the Internal Revenue Service concluded that it would not be within their current rulings policy to issue a ruling on the proposed "Uniform Gifts to Minors Act." However, as a substitute which I hope will be of some benefit to you, they suggested that in view of the general public interest in the problem they might give me a memorandum stating their views which I am free to pass along to you, as a substitute for a formal ruling.

Enclosed is a photostatic copy of Mr. Littleton's memorandum to me on the subject, which you will find self-explanatory and which I hope will suffice for your purposes.

With best personal regards and best wishes for a highly successful year as President of the Nebraska State Bar Association, I am

Sincerely yours,

LAURENS WILLIAMS
Assistant to the Secretary

Office Memorandum

UNITED STATES GOVERNMENT

October 23, 1956

To: Mr. Laurens Williams
Assistant to the Secretary
From: Acting Assistant Commissioner (Technical)
Subject: Proposed Uniform Gifts to Minors Act

This refers to the letter of October 8, 1956, addressed to you by Mr. Barton H. Kuhns, President of the National Conference of Commissioners on Uniform State Laws, concerning the applicability of Rev. Rul. 56-484, I.R.B. 1956-40, 8, and Rev. Rul. 56-86, I.R.B. 1956-11, 11, to transfers made pursuant to a proposed "Uniform Gifts to Minors Act" which has been drafted by the Conference.

Rev. Rul. 56-484 and Rev. Rul. 56-86, supra, deal with the Federal income and gift tax consequences of gifts of securities to minors under a model custodian act adopted by the State of Colorado and a number of other states. In Rev. Rul. 56-484, it is held that regardless of the relationship of the donor or of the custodian to the donee, income derived from property transferred under the model custodian act adopted by the State of Colorado which is used in the discharge or satisfaction, in whole or in part, of a legal obligation

of any person to support or maintain a minor is, to the extent so used, taxable to such person under section 61 of the Internal Revenue Code of 1954. However, the amount of such income includible in the gross income of a person obligated to support or maintain a minor is limited by the extent of his legal obligations under local law. To the extent that income derived from the property in question is not so includible in the gross income of the person obligated to support or maintain the minor (donee), such income is taxable to the minor.

Rev. Rul. 56-86 holds that a transfer of securities to a minor donee pursuant to the Colorado statute constitutes a completed gift for Federal gift tax purposes at the time the transfer is made and that such gifts come within the purview of section 2503(c) of the 1954 Code and, therefore, qualify for the annual gift tax exclusion authorized by section 2503(b) of the Code.

A study of the draft of the proposed "Uniform Gifts to Minors Act" discloses that the provisions thereof, insofar as they are material to the questions presented, are substantially the same as those of the model custodian act adopted by the State of Colorado. Therefore, the position of the Service with respect to transfers made pursuant to the Colorado statute, as set forth in the two revenue rulings cited above, would be the same with respect to transfers made under the proposed uniform act.

The letter from Mr. Kuhns is returned.

ARTHUR LITTLETON
Assistant Commissioner

LAND LAW — QUESTIONS AND SUGGESTIONS

1. NOTICE TO FORECLOSE A MORTGAGE

We have been asked to discuss the legality of a foreclosure notice containing the following clause:

> "Said premises will be sold subject to existing encumbrances of record created prior to said mortgage, if any."

The reason for the question is stated as follows:

> "This clause, of course, does not appear in the original mortgage. The basis for the inclusion of this clause is G. L. (ter. Ed.) C. 244, S. 14 which states in the paragraph following the suggested form of notice, 'and the premises shall be deemed to have been sold, and the deed thereunder shall convey the premises subject to and with the benefit of all restrictions, easements, improvements, outstanding tax titles, municipal or other public taxes, assessments, liens, or claims in the nature of liens, and existing encumbrances of record created prior to the mortgage, whether or not reference to such restrictions, easements, improvements, liens, or encumbrances is made in the deed.'

"There are no cases directly in point, and the three leading cases concerning notices appear to be Holzman vs. Bristol County Savings Bank, 277 Mass. 383; Bernstein vs. Shain, 263 Mass. 189, and Russell vs. Bon, 221 Mass. 370. Any assistance you can give in this matter will be greatly appreciated."

There appears to be some difference of opinion at the bar as to whether the insertion of the clause quoted "clouds the record title."

We may be wrong but we fail to see why the clause "clouds" the foreclosure sale. Chapter 244, Section 14 provides

"The following form of foreclosure notice may be used and may be altered as circumstances require; but nothing herein shall be construed to prevent the use of other forms.

(Form.)

Mortgagee's Sale of Real Estate

By virtue and in execution of the Power of Sale contained in a certain mortgage given by ..... to ..... dated ..... and recorded with ..... Deeds, Book ....., page ....., of which mortgage the undersigned is the present holder .....

(If by assignment, or in any fiduciary capacity, give reference.)

.....

for breach of the conditions of said mortgage and for the purpose of foreclosing the same will be sold at Public Auction at ..... o'clock, ... M. on the ..... day of ..... A.D., 19 ..... (place) ..... all and singular the premises described in said mortgage,

(In case of partial releases, state exceptions.)

To wit: "(Description exactly as in the mortgage, including all references to title, restrictions, encumbrances, etc., as made in the mortgage.)"

Terms of sale: (State here the amount, if any, to be paid in cash by the purchaser at the time and place of the sale, and the time or times for payment of the balance or the whole as the case may be.)

Other terms to be announced at the sale.

(Signed) .....

.....

Present holder of said mortgage.

..... 19.....

"A notice of sale in the above form, published in accordance with the power in the mortgage and with this chapter, together with such other or further notice, if any, as is required by the mortgage, shall be a sufficient notice of the sale; and the premises shall be deemed to have been sold, and the deed thereunder shall convey the premises, subject to and with the benefit of all restrictions, easements, improvements, outstanding tax titles, municipal or other public taxes, assessments, liens or claims in the nature of liens, and existing encumbrances of record created prior to the mortgage, whether or not reference to such restrictions, easements, improvements, liens or encumbrances is made in the deed; but no purchaser at the sale shall be bound to complete the purchase if there are encumbrances, other than those named in the mortgage and included in the notice of sale, which are not stated at the sale and included in the auctioneer's contract with the purchaser."

"The form of notice is permissive and it is expressly stated that other forms may be used. The statute says that the permissive form and the foreclosure deed shall convey the premises if adj stelydes bed subject it—Cumbrance of record."

The clause in question merely contains some words used in the statute with the addition of the words "if any" which do not add or subtract anything. The whole clause quoted seems to us mere surplusage which merely repeats what the statute says and may be disregarded as it does not affect the validity of the notice. The deed carries the title to the land subject to the list of things listed in the mortgage *or* the statute.

Of course, a purchaser at a foreclosure sale like any other purchaser must examine his own title and cannot be forced to accept a title if not good on the record, ***in fact***, but mere imaginative possibilities are not *facts* and the opinion of Chief Justice Morton in Dow v. Whitney 147 Mass. 1 seems to show that the clause in question is not a cloud. The court said

"A deed of all the right, title and interest, or of all the interest, of the grantor in a lot of land, conveys the same title as a deed of the land. It is the policy of our laws that a purchaser of land, by examining the registry of deeds, may ascertain the title of his grantor. If there is no recorded deed, he has the right to assume that the record title is the true title. The law has established the rule, for the protection of creditors and purchasers, that an unrecorded deed, if unknown to them, is as to them a mere nullity. The reasons for the rule apply with equal force in the case of a deed of the grantee's right, title and interest, as in that of a deed of the land. We are of opinion, therefore, that the deed of Stephen Dow conveyed to his grantee a title which is good against any prior deed, if unrecorded. To hold otherwise would defeat the purpose of the registration laws, and create confusion in the titles to land.

"The defendant ought not to be required to accept a title that is doubtful. But in this case there is no reasonable doubt that the plaintiff's deed conveys a good title. Its validity depends upon a pure question of law, and no question of fact is involved. The mere possibility that a claimant may hereafter appear and ask the court to overturn a well settled rule of law is not such a defect or doubt in the title as ought to lead the court in its discretion to deny to the plaintiff the right in equity to a specific performance of the contract. Hayes v. Harmony Grove Cemetery, 108 Mass. 400."

Are we wrong, and if so, why?

F.W.G.

2. Citations on Petitions to Discharge Old Mortgages

G. L. Chapter 240 Section 15 provides for these petitions. A practitioner writes

"The present procedure is to publish the entire petition and citation in full at a cost exceeding that of the land registration citation. I feel certain that the Land Court could formulate a shorter and less expensive citation."

3. Planning Board Bonds and Planning Board Duties

G. L. Chapter 41 Section 81U as amended by Chapter 324 of 1955 provides

> "Before approval of a plan by a planning board it may require provision for the construction of ways and the installation of municipal services in accordance with its rules and regulations, and may specify the time within such construction and installation shall be completed, with proper bond, or, at the election of the applicant, the deposit of money or negotiable securities, sufficient, in the opinion of the board, to secure performance; or at the election of the applicant instead of requiring a bond or deposit the board may approve a plan on condition that no lot in the subdivision shall be sold and no building shall be erected or placed on any lot until the ways have been constructed and the municipal services installed so as to serve adequately such lot in accordance with the requirements of the board, and the board may require the owner of the land being subdivided to execute, deliver and record an agreement with such board binding upon such land to perform such condition. Upon performance of the condition with respect to any lots the board shall issue a certificate of such performance, which shall be acknowledged according to law and may be recorded." Compare also Sections 81 W and 81 DD.

We are informed that the boards in some towns, for example, Milton, Weston, Lexington and doubtless others are careful to respect, as they should, the rights of owners who have purchased lots relying on the action of the boards. They do not release the bond until the agreement to perform has been completed.

On the other hand we have received the following information from an active practitioner:

> "A purchaser of course is put on notice by the recording of a proper agreement. But the law as it stands now, gives a purchaser no protection or right to enforce the bond or security if the planning board fails to do so. Planning boards are releasing, amending and extending without notice to purchasers, these performance bonds and it would seem that if the purchasers have bought in reliance of planning board requirements supported by these performance bonds, they should not be altered or amended or released without at least some knowledge or assent of these purchasers. In some cases, the planning boards are showing absolutely no interest in requiring compliance within any reasonable time by the developer. It would seem that an owner, who having purchased in reliance of this siuation, should be able to force either the planning board to act, or to proceed himself to obtain compliance, probably in equity. So far as the bonds are concerned, a purchaser or mortgagee could be considered as a matter of law, an additional obligee in these performance bonds or they could be specifically written so that they would protect the interest of a purchaser or mortgagee similar to the public building performance bonds under G. L. Ch. 30, s. 39."

The situation thus described would seem to present a picture of obvious injustice, and while no procedural remedy is specified, as in the public building act referred to, we suggest that the 3 sections

of Chapter 41 referred to be carefully studied with a view to proceeding in equity against the town, the planning board as its agent and the contracts and surety on the agreement and bond for specific performance of the secured agreement or damages.

While we have not attempted a thorough study of the question, we suggest the probability that a little vigorous litigation to make delinquent planning boards respect the rights of persons under the law and make the towns see that they do would be healthy for everybody? Are we wrong? If so, why? Further discussion is invited. Whether mandamus or some other prerogative writ could be used, we have not considered, but it might be worth thinking about.* F.W.G.

THE LEGISLATIVE RESULTS OF THE JUDICIAL SURVEY COMMISSION OF 1955

The Commission was appointed by Governor Herter to study the Judicial System following a vote requesting him to do so adopted at the annual meeting of the Massachusetts Bar Association in June 1954 (See 39 M. L. Q. No. 3, Oct. 1954, pp. 7-8). The report with the Governor's message in regard to it was printed in full in the *Massachusetts Law Quarterly* (Vol. 41, No. 1, March 1956). We have been asked to discuss the legislative results of the report.

Having opposed the creation of this Commission and having thereafter been appointed as a member, we are glad to testify that as a result of close observation of the sustained interest and efforts of its members and their helpful suggestions that the creation of the Commission was justified in the public interest. While dissenting briefly on two points for reasons which we still believe to be sound (see minority report in "Quarterly" for March 1956) we believe the report and its results have opened a new and healthy chapter in our long legal history.

The development of the administration of justice in Massachusetts owes much to the work of a considerable number of commissions and committees. Most of them are listed in the Appendix to the 2nd and final report of the Judicature Commission in 1920 (See 6 M. L. Q. No. 2, Jan. 1921, pp. 166-168). Also the far reaching influence of various individuals in the continuously constructive story since the adoption of the Constitution in 1780, should not be forgotten. Of these contributing factors, perhaps, the most important may be listed as follows:—

1st. The appointment and six years of judicial service from 1806 to his death in 1813 of Theophiles Parsons as Chief Justice of the Supreme Judicial Court. That was the beginning of our modern

*Planning boards and others may do well to consult the Director of Planning of the Massachusetts Department of Commerce, 334 Boylston St., Boston in regard to problems.

administration of justice (See "The Constitutional History of the Supreme Judicial Court" M. L. Q. for May, 1917, p. 519).

2nd. The combined effect of the gift of Nathan Dane in 1829 to the Harvard Law School to enable Justice Joseph Story not only to teach but to write his text books, the work of the Commission on the Revised Statute of 1836 and the appointment in 1830 and the long service of Lemuel Shaw as Chief Justice; the combined influence of these three facts made the law and practice more within reach of, and more intelligible to, the bar throughout the Commonwealth. (See Poem, "The Place of Judge Story," 1 M.L.Q. No. 3, May 1916, and see No. 4, Aug. 1916, p. 329.)

3rd. The Practice Act of 1851-52 which simplified the old Common Law procedure.

4th. The report of the Special Commission of 1859 which resulted in the substitution of the Superior Court for the old Courts of Common Pleas.

5th. The work of John L. Thorndike and Sidney Bartlett in bringing to an end in 1877 and 1883 the unjust restrictions of equitable remedies which had obstructed justice for almost two centuries. (See 38 M.L.Q. No. 3, Aug. 1953, pp. 41-43.)

6th. The report of Alfred Hemingway as sole Commissioner to draft the Land Court Act of 1898. (See History of the Court 34 M.L.Q. No. 1, Jan. 1949.)

7th. The report of Judge Sheldon's Commission of 1899 to simplify criminal procedure.

8th. The creation of the Boston Juvenile Court and the juvenile jurisdiction of district courts in 1906.

9th. The reports of the Commission of 1909 on the administration of Justice, of which Robert M. Morse was chairman, the report in 1911 of the Commission on the Suffolk County Courts of which Chief Justice Bolster was chairman and the report of the Commission on Workmen's Compensation in 1912.

10th. The two reports of the Judicature Commission in 1919 and 1920. (See 5 M.L.Q. No. 2, Feb. 1920 as to small claims procedure and No. 2, Jan. 1921.)

As already stated this list does not cover the work of the other committees and commissions, the reports of the Judicial Council or others which have helped to keep continuously alive the spirit and practice of balanced thinking about the courts. This brings us to the Survey Commission of which Judge Cox was Chairman.

The Report of The Survey Commission

The fact which distinguishes this Commission from the others referred to is that the others were composed of lawyers, but about half of the members of the Survey Commission were laymen of varied experience with life outside of court houses. This fact is reflected in the report which recognizes the obvious business aspect of the administration of justice in a modern state. This is particu-

larly true of the administrative bill for an Executive Secretary of the Supreme Judicial Court recommended by the Commission and by his Excellency, the Governor and adopted substantially as proposed. At the hearing on the report before the Judiciary Committee, it was described by one of the most experienced laymen on the Commission as the "guts" of the report and we so considered it. Why? There seems to be some misunderstanding about this matter but there is nothing new or extraordinary about it. It is, we submit a matter of common business sense which has been needed for many years in many court systems and adopted with a good effect in varying ways in a number of states and in the Federal system.

G. L. Chapter 211 Section 3 (to which the new act has been added) has provided in similar languages since 1782 that

> "The supreme judicial court shall have general superintendence of all courts of inferior jurisdiction to correct and prevent errors and abuses therein . . . to the furtherance of justice and to the regular execution of the laws." (1782, 9 S 2; RS 81, SS 4, 5; 1859, 196, S 38; GS 112, S 3; PS 150, S 3; RL 156, S 3.)

In 1836 the Commissioners on the Revised Statutes said in their "notes" of the similar earlier statute (Sections 4-5 of R. S. C. 81)

> "It is necessary in every system of jurisprudence that a general superintendence of this kind should be entrusted to some one tribunal in order to maintain throughout the whole a uniform and regular execution of the laws."

Some system of such superintendence is needed today more than it was in 1782 or 1836 but there has never been anyone to keep the court informed.

Today, as stated by the Survey Commission

> "The judicial system in Massachusetts comprises a huge administrative structure of court houses, judges, clerks, court officers, and other employees, without any administrative head and (generally speaking) without any single body of governing rules.
>
> "The courts in the structure include the Supreme Judicial Court (7 justices), the Superior Court (32 justices), 14 Probate Courts (23 justices), the Land Court (3 judges), the Municipal Court of the City of Boston (9 justices and 6 special justices), the Boston Juvenile Court (1 justice and 2 special justices), and 72 District Courts (76 justices and 92 special justices).
>
> "This is a total of 91 courts with more than 250 justices and special justices in the system. The administration of justice in Massachusetts today is big business, probably costing its citizens between $14,000,000 and $16,000,000 annually." (See "Quarterly" Vol. 41 No. 1, March 1956, p. 35.)

In the 30th report of the Judicial Council in 1954 it was pointed out that

> "In ordinary business outside of a court house successful management when faced with the bottle necks resulting from old habits which retard production attack the problem from as many angles as possible

to try to remove or reduce the causes before increasing costs by increasing personnel to work under the old habits." (See p. 11, 40 M. L. Q. No. 1, Feb. 1955.)

The Survey Commission composed of laymen and lawyers, faced with the "big business" above described unanimously recommended the bill which was finally adopted as Chapter 707 of the Acts of 1956.

[CHAP. 707]

AN ACT PROVIDING FOR ADMINISTRATION OF THE COURTS AND AN EXECUTIVE SECRETARY TO THE JUSTICES OF THE SUPREME JUDICIAL COURT.

Be it enacted, etc., as follows:

SECTION 1. Section 3 of chapter 211 of the General Laws, as appearing in the Tercentenary Edition, is hereby amended by adding at the end the following paragraph:—

In addition to the foregoing, the justices of the supreme judicial court shall also have general superintendence of the administration of all courts of inferior jurisdiction, including, without limitation, the prompt hearing and disposition of matters pending therein, and the functions set forth in section three C; and it may issue such writs, summonses and other processes and such orders, directions and rules as may be necessary or desirable for the furtherance of justice, the regular execution of the laws, the improvement of the administration of such courts, and the securing of their proper and efficient administration. Nothing herein contained shall affect existing law governing the selection of officers of the courts, or limit the existing authority of the officers thereof to appoint administrative personnel.

SECTION 2. Said chapter 211 is hereby further amended by inserting after section 3 the following six sections:—*Section 3A.* There shall be an executive secretary to the justices of the supreme judicial court appointed by said justices to serve at their pleasure. Said executive secretary shall be a member of the Massachusetts bar and his compensation shall be at the rate of fifteen thousand dollars per annum and shall be paid by the commonwealth. He shall be provided with suitable quarters in the Suffolk county courthouse in the City of Boston.

Section 3B. The executive secretary, with the approval of the justices of the supreme judicial court, shall appoint such employees not to exceed three, and the salaries not to exceed five thousand dollars each, as may be necessary to perform the duties vested in him. Said salaries shall be paid by the commonwealth.

The executive secretary and said employees shall not engage directly or indirectly in the practice of law.

Section 3C. The executive secretary, subject to the direction and supervision of the justices of the supreme judicial court, shall perform the following functions and shall make reports and recommendations to the justices of the supreme judicial court relative thereto:—

(*a*) Examination of the administrative methods, systems and activities, relating to their offices or employment, of the judges, clerks, registers, recorders, stenographic reporters and employees of all courts of the commonwealth and the offices connected therewith.

(*b*) Examination of the state of the dockets of the courts, securing

information as to their needs for assistance, if any, and preparation of statistical data and reports of the business of the courts.

(*c*) Examination of the arrangements for accommodations for the use of the courts and the clerks, registers and recorders thereof, and the examination of the arrangements for the purchase, exchange, transfer and distribution of equipment and supplies therefor.

(*d*) Investigation and collection of statistical data relating to the expenditures of public moneys, state, county and municipal for the operation and maintenance of the courts and the offices connected therewith.

(*e*) Examination, from time to time, of the operation of the courts and investigation of complaints with respect thereto.

(*f*) Attendance to such other matters necessary to carry out the provisions of this section and sections three D, three E and three F as may be assigned by the justices of the supreme judicial court.

Section 3D. All judges, clerks, registers, recorders and stenographic reporters and their assistants and employees, the administrative committee of the district courts, the administrative committee of the probate courts, the board of probation, the commissioner of probation and all probation officers shall comply with any and all requests made by the executive secretary for information and statistical data bearing on the state of the dockets of the courts and such other information as may reflect their activities and the business transacted by them, and the expenditure of public moneys for the courts and the offices connected therewith. The attorney general and all district attorneys shall comply with any and all requests made by the executive secretary for statistical data bearing on the operation of their offices.

Section 3E. The executive secretary shall submit annually as of June thirtieth to the justices of the supreme judicial court a report of the activities of the office of executive secretary together with his recommendations, which report shall be a matter of public record and shall be printed as a public document.

Section 3F. The justices of the supreme judicial court may provide by rule or special order for the holding of conferences of the judges of the various courts and of invited members of the bar, for the consideration of matters relating to judicial business, the improvement of the judicial system and the administration of justice. The executive secretary shall act as secretary of these conferences.

SECTION 3. Section 24 of chapter 221 of the General Laws is hereby repealed. *Approved September 26, 1956.*

THE EXECUTIVE SECRETARY

The Commission in its report suggested the title "Administrative of the Courts." This was changed to "Executive Secretary—to the Supreme Judicial Court." We call the attention of the profession to the wisdom of our Supreme Judicial Court in selecting, and the good fortune of the Commonwealth in securing the services of, John Augustine Daly, Esq. of Cambridge, one of the most experienced and respected members of the bar of the Commonwealth as the first Executive Secretary under the Act.

OTHER RESULTS OF THE COMMISSION'S REPORT

CHAPTER 738

2. DISTRICT COURT REORGANIZATION

This act was passed in a form that retains the theory behind the proposals of the Commission, but the enacted bill increases the number of full-time judges, including the 9 in the Boston Municipal Court, from 20 to 51. It provides that only such judges, except in the Boston Municipal Court and on the Cape and Islands, be authorized to hear major civil cases (the Commission's principal recommendation). Furthermore, full-time judges, except those in the Boston Municipal Court, may be assigned to sit on a circuit basis in other district courts. Circuit-sitting was an essential part of the Commission's proposal. The enacted bill did not adopt the Commission's proposal that the Suffolk County district courts be merged into the Boston Municipal Court.* Nor did the enacted bill adopt the Commission's recommendation that no new special justices or part-time presiding justices be appointed to fill vacancies occurring in those offices. The number of new special justices was limited, however, by providing that the number of special justices in a district court was to be equal to the number of the court's regular justices (full-time or part-time) and that vacancies should be filled only in conformity with this equality. The enacted bill did not adopt the Commission's recommendation that the salaries of clerks should be treated separately by ceasing to be simply a percentage of judges' salaries, but on the other hand, it rejected a House proposal that the current 75% relationship between judges' and clerks' salaries be retained. The matter was finally settled by giving the district court clerks in the full-time courts a flat 20% increase in their present salaries. Despite the Commission's disapproval of six-man juries in the district courts, the enacted bill provides for such juries in the Worcester District Court but only for a two-year trial period.

CHAPTER 664

3. ADMINISTRATIVE COMMITTEE OF THE PROBATE COURTS

This act was passed in a form that retains a considerable and important part of the Commission's proposal. The Administrative

* In connection with the reference to Suffolk County, attention should perhaps be called to a plan for a Suffolk County system suggested in the thirties by the late Chief Justice Wilfred Bolster and by the Judicial Council (briefly outlined in the 16th report, p. 24). As there suggested "two kingdoms" in an area the size of Suffolk County does not seem too sensible. Unfortunately the plan was opposed while Bolster was Chief Justice, by judges of the other Suffolk Courts so we lost the chance to learn more about a circuit system in the area best fitted for it. Some years later, after Bolster was no longer on the Court, the judges of the other courts were reported as in favor, but, by that time the judges of the central court were reported as opposed so the plan "fell between two stools."

Committee was given authority to prescribe uniform forms, practices, procedures and records. The Commission's proposals that the Administrative Committee be given superintendence over the probate courts and that it be authorized to regulate sittings were deleted, partly because of constitutional objections under part the Second, Chapter III, paragraph 4 of the State Constitution. Notice should be taken of final action by the judges of the probate courts, approved by the Supreme Judicial Court on July 2, 1956, adopting 164 uniform forms.

CHAPTER 670

4. RETIREMENT OF JUDGES

This act adopted the recommendation of the majority of the Commission in providing that judges of all courts appointed after July 31, 1956 should retire after reaching the age of seventy if they wished to receive their pensions. The application of this requirement to justices of the Supreme Judicial Court had been opposed by two members of the Commission for reasons stated in a minority report (H.2620 at pp. 48, 49, 41 M. L. Q. No. 2, March 1956).

5. DISTRICT COURT JUSTICES IN THE SUPERIOR COURT

This bill to extend the act allowing them to be called to sit on misdemeanors and in civil motor tort cases had also been recommended by the Judicial Council in its 31st report and was extended until

CHAPTER 313

6. REGULATION OF PLEADING

This recommendation (to remove a doubt) authorizing the Superior Court to regulate rules of pleading under G. L. Chapter 231, Section 147. This had also been recommended by the Judicial Council substantially as passed.

7. LAND COURT

An assistant court officer was provided for.

RESOLVES CHAPTER 126

8. RULE-MAKING

This proposal for general rule-making authority in the Supreme Judicial Court, similar to that of the Supreme Court of the United States adopted in 1934 was referred to the Judicial Council for a further report and is discussed by the Council in its 32nd report in this issue. (p. 15)

9. LIMITED ORAL DEPOSITIONS BEFORE TRIAL IN CIVIL CASES

This was also recommended by the Judicial Council. The recommendation is renewed by the Judicial Council in its report in this issue. (p. 7)

10. A MODERATE JURY FEE

This proposal by the Commission of a $15.00 fee for a claim of jury trial as a method of attacking court congestion "at its source" had also been repeatedly recommended by the Judicial Council and more than once by the Judiciary Committee and, at least once by the Committee on Counties, as well as by county treasurers. It was not adopted. It is again recommended by the Judicial Council in the report in this issue for reasons there stated. (p. 6)

F. W. G.

OBSERVATIONS ON THE CHAPIN CASE AND "THE BRIGGS LAW"

This paper with the following introduction was also printed in the Boston Sunday Herald of December 16, 1956. Editor.

Introductory Note

(After the commutation of Kenneth Chapin's sentence, one of his defense counsel, Lawrence R. Cohen, was troubled by the apparent incompleteness of the psychiatric report prepared about the defendant before his trial. Accordingly, he wrote a brief paper stating his opinion that the inadequateness of the report probably cost Chapin a recommendation of mercy by the jury which heard his case. Before publication, a copy of this letter was submitted to Dr. Jack R. Ewalt, the Commissioner of Mental Health. Dr. Ewalt felt that some of the critical portions of the report were the result of incomplete information. Mr. Cohen and Dr. Ewalt met and exchanged their views and information in their respective fields. The following letter is a combined effort in which they have been joined by Mr. Samuel P. Sears who subscribes to the views expressed on behalf of defense counsel.)

The death sentence of Kenneth R. Chapin has been commuted to imprisonment for life. In time, many of us will forget about the bizarre killings he committed as well as the public dispute engendered by the granting of executive clemency. This is not an attempt to prolong the bitter argument about whether or not Chapin should have been electrocuted. We would like to suggest, however, that certain valuable lessons can be learned from this regrettable case.

Prior to 1921, many murder trials were marked by the conflicting testimony of alienists. The defense for an admitted killer would often produce physicians to testify that the accused was legally insane. With almost boring regularity, the prosecution would offer doctors to testify that he was perfectly normal. A jury of laymen would then have to decide between the conflicting witnesses. These

spectacles were not enlightening to the public and certainly did little credit to the profession of psychiatry.

In 1921, Massachusetts adopted the Briggs Law (General Laws, C. 123, Sec. 100A). This provides that a person accused of murder, and certain other crimes, shall be "examined with a view to *determine his mental condition* and the existence of *any mental disease or defect which would affect his* criminal responsibility." The Department of Mental Health is charged with the responsibility for making the examination, although it may employ private psychiatrists for this purpose. The department must file a report of the examination which then becomes available to the court, the prosecution, and the defense.

The Briggs Law was designed to eliminate, or to minimize, unseemly and confusing disputes between psychiatrists at criminal trials. It is supposed to provide the court with a thorough opinion of impartial physicians on the mental condition of the accused. Defense counsel feel that this law requires the doctors to determine not *only* whether or not a person is legally sane; it directs them also to report on "his mental condition".

A number of Briggs Law reports in murder cases have described the mental condition of the accused before reaching the ultimate conclusion that he was legally sane or insane. However, the Department of Mental Health has interpreted the law to mean that the doctors were required to determine only whether or not the criminal was suffering from any mental disease or defect which might affect his criminal behavior. It points out that the law makes no provision for an examination in a mental hospital unless the accused person is then on parole; and that it can spend only $7.00 for each physician for his *entire* services in preparing any single report. No funds are available for private psychologists or social workers to assist in these cases. Thus, the department says that it must almost inevitably rely on personnel who are employed by the Commonwealth.

Knowing all this, the defense lawyers believe that, in the case of Kenneth Chapin, the report of the doctors appointed by the Department of Mental Health fell short of meeting the humane purposes of the Briggs Law. They feel that this failure deprived the accused of an opportunity to obtain mercy from his jury. Also, that it led directly to the confusion which followed his conviction and, ultimately, to the extraordinary hearing before the Governor's Council. They agree with the testimony that this report was woefully inadequate.

The department appointed two doctors to prepare the Chapin report. They were both employed by the department and served in an area where the trial was to be held. Thus, at the outset, the defendant was turned over to physicians with an institutional approach who were close to the locale of the killings. We do not say that they had a predilection for the prosecution, but these doctors could not have begun this examination with the same detached ap-

proach as would, say, a private, practicing psychiatrist from Boston or New Bedford.

These psychiatrists filed a joint report of less than three typewritten pages. Most of this document is historical or statistical. Its psychiatric portion states in 6½ lines that Chapin "answered all questions promptly, relevantly and coherently, and displayed adequate emotional responses. He denied hallucinatory experiences in any sphere or of any type. No delusions or delusional trends were elicited. He showed relatively good judgment and insight into his criminal behavior. . . . . It is the opinion of the examiners that the prisoner is not suffering from any mental disease or defect which would affect his criminal responsibility."

Dr. Ewalt feels that this report is typical of Briggs reports which have been filed for many years past. These have been generally accepted by the courts and have not been rejected because of incompleteness. He points out further that more than 1,280 Briggs reports were filed in the past year and that it would be impossible to have each of them contain a complete psychiatric report of the person examined.

The two doctors who prepared the report were called by the prosecution to testify at the Chapin trial. They and another psychiatrist took a position consistent with the Briggs report, to wit, that Chapin was a normal, 18 year old, American boy, legally sane. The defense presented conflicting testimony that Chapin was not normal and was legally insane. It was apparent that if the jury accepted the conclusion of the prosecution doctors, *they would also accept their opinion that Chapin was a perfectly normal boy.* The jury found him guilty and did not recommend mercy.

In 1951, the legislature made it possible for a jury to award life imprisonment to a person convicted of first degree murder "upon and after consideration of *all* the evidence." (G. L. Ch. 265, Sec. 2) We believe that the Chapin jury failed to do so because they believed not only that he was legally sane but also that there was *nothing* wrong with his mental condition. Did the Briggs report make any attempt to determine or to describe Kenneth Chapin's mental condition? Counsel think not.

After Chapin's conviction, Governor Herter asked the Commissioner of Mental Health to examine Chapin to determine his then mental condition. Pursuant to this, the following steps were taken:

1. A social service investigation.
2. Psychological tests by the top man in the department.
3. Psychiatric examinations by four top doctors in the department.

The department's second report concludes that Chapin was legally sane, *BUT* it differs widely from the Briggs report and from the prosecution testimony in its description of his mental condition. For example, here are some quotes, out of context, from the latter reports:

". . . . he appeared to be a schizoid, isolated, emotionally flattened individual."

" . . . . still present personality impairment; the lack of emotional capacity causing deficient capacity for judgment . . . . all of which are necessary to reason properly and to prevent another outburst of violence."

"I believe . . . . that he was unaware of his committing the crime for the few moments after the door was opened until he saw the blood. . . . ."

"I do not believe that he is free of psychiatric manifestations . . . . it would be most advisable for him to receive treatment for his condition."

Thus, we have two reports prepared by the Department of Mental Health. The Briggs Law report gives no hint of mental deviation. It states simply that Chapin was legally sane. It did not "determine his mental condition".

After his conviction, the department, as a result of more thorough examinations, submitted reports indicating that Chapin is not a normal person but rather that he is an unstable character. Defense counsel feel strongly that the jury and the defense should have had the benefit of this later and more thorough type of examination. The adoption of the mercy statute in 1951 broadened the possible uses of a Briggs law report. The law is a good one; the lawyers feel that it was not administered properly.

The superior court has the power to commit a person under indictment for a crime to an institution for the insane pending the determination of his insanity. (G. L. C. 123, s. 100). Inasmuch as the Briggs law requires that an accused murderer shall be examined for this very purpose, it appears that the two sections should be read together and that all persons accused of murder should, upon the request of their attorneys, be committed to a hospital for the insane while the examination under the Briggs Law is being conducted. This may pose a security problem in these hospitals and it would be ideal to have a separate medical-legal building for this express purpose. However, the attorneys feel that, in the interim, special precautions can be taken to guard persons who are committed for this purpose.

One of the curious aspects of the Chapin case is that a boy of 18, who had committed two revolting killings, was never sent to a mental hospital. His examinations were conducted entirely in jails except for the taking of certain machine tests which were conducted by lay personnel. It is even more curious that the Department of Correction will *now* conduct a full psychiatric examination of Chapin, and he may even be sent to Bridgewater for examination.

The long ordeal of this case will have served some purpose if its real lessons are appreciated. We have excellent laws in the books. Failure to fulfill their requirements or to employ them with imagination may result in an injustice to the prisoner and to society.

The law should be amended to provide that every person accused of a capital crime shall, upon the request of his attorneys, be committed to a mental hospital for at least thirty days. The examination under the Briggs Law should be conducted during the commitment.

In the future, the Department of Mental Health should be enabled to appoint a full panel of top doctors and professional assistants to conduct a thorough examination and to file a complete report on the mental condition of any such person. Funds should be made available to make it possible to include at least one private, practicing psychiatrist in this group.

If these recommendations are followed, all parties will receive the assistance that our laws were meant to provide. Only then will a jury in a capital case have a helpful and proper guide to determine the double question of legal sanity *and* the existence of any extenuating mental circumstances which might warrant a recommendation of life imprisonment.

Lawrence R. Cohen
Samuel P. Sears
Jack R. Ewalt, M. D.

PROPOSED LEGISLATION

(Introduced by Raymond F. Barrett)

House No. 1574, bill to provide for more careful investigation of the mental condition of persons indicted for murder.

Chapter 123 of the General Laws is hereby amended by inserting after Section 100A the following

Section 100B. Whenever a person is indicted by a grand jury for murder the examination referred to in Section 100A shall consist of examination and observation at a state hospital or at the state farm at Bridgewater for a period or not less than thirty days. Upon the filing of the report referred to in Section 100A by the department with the clerk of the court in which the trial is to be held it shall be impounded forthwith subject to the order of the court. During the period of examination and observation the accused shall have the right upon the written request by him or by his attorney to be examined by a doctor or doctors of his own choice.

BOOK NOTICES

Massachusetts Taxation of Corporations, 2nd Ed., Herman Stuetzer, Jr. With a Foreword by the Tax Commissioner. Little, Brown & Co., $3.25.

Mr. Stuetzer is both a member of the Massachusetts Bar and a Certified Public Accountant. His first edition appeared in 1954. As he states in his "Preface"

"Major changes in the administration of the corporation excise on domestic and foreign business and manufacturing corporations, and important statutory changes are responsible for the second edition of this manual. As in the case of its predecessor, this second edition encompasses the taxes of the Commonwealth applying only to corporations. The most important of these taxes is the corporation excise, and the bulk of the manual is devoted to this excise and to the forms provided for it. Because of limited interest, less coverage is accorded the specialized corporate taxes which are applicable only to certain classes of corporations, such as corporate shipowners, corporations dealing exclusively in securities, utility corporations, banks, and insurance companies. Taxes which are applicable to other tax-payers as well as to corporations, and taxes which are not applicable to corporations at all, are not described, except possibly as they may relate to corporate taxes.

"The manual has not been designed to be a comprehensive research tool but a quick and ready reference for the harassed tax practitioner, be he accountant or lawyer, as well as for the busy corporate executive. Because of its brevity the author does not claim that the coverage of the manual is complete in every detail. Within the limitations of that design, legislation through the 1956 General Court (Massachusetts Legislature) and administrative promulgations and leading judicial decisions through September 30, 1956, are reflected in the text. In addition, Appendix D of the Manual contains a handy complete reprint of Chapter 63 and other pertinent portions of the General Laws dealing with the taxation of corporations. No such up-to-date reprint is presently available in form elsewhere."

In his "Foreword" Mr. Dane, the Chairman of the State Tax Commission says "The State Tax Commission is strongly of the opinion that Mr. Stuetzer has done a real service to the Commonwealth in preparation of this book."

F. W. G.

Massachusetts Conveyancers' Handbook, by George P. Davis, Lawyers' Co-operative Publishing Co., Rochester, N. Y.

Mr. Davis has written a book which should be of definite value to beginners and to persons who are not specialists in conveyancing. It tells how to proceed from the time a client asks advice with refer-

ence to buying a house to the final passing of papers. Furthermore, experienced conveyancers could study to advantage the careful discussion of the problems to be considered in drawing Agreements of Sale of real estate.

The chapter dealing with jointly held property seems particularly timely for there is probably no matter frequently met with in conveyancing which is more troublesome and more likely to be overlooked than the questions involved in the taxation of the succession to such property.

The Appendix contains detailed abstracting forms for those who prefer not to use printed blanks. It also contains many well considered forms relating to Agreement of Sale, Deeds, Mortgages, restrictions and real estate trusts.

The text is supported throughout by numerous citations.

CHARLES W. BLOOD

Digest and Index of Opinions of Appellate Division of the Boston Municipal Court — 1938-1956

November 30, 1956

Clerk John E. Hurley of the Municipal Court of the City of Boston, Civil Division, wishes to announce the publication of a new digest and index of the opinions of the Appellate Division of the Municipal Court of the City of Boston. It covers all the opinions rendered by the court since 1938, and is now available for purchase by the public.

This publication constitutes the second digest prepared since the establishment of the Appellate Division in 1914. It was prepared by members of the Clerk's office who were assisted in the work by Mr. Joseph A. LaPlante of the Boston Bar, who edited and organized the voluminous materials upon which it is based.

Copies of these are available to members of the Bar at $2 each and can be purchased at the office of the Clerk, Room 374, Old Court House, Boston.

NOTICE FROM TAX COMMISSIONER

Extension of Time for Filing Information Returns

In accordance with the provisions of section 33 of Chapter 62 of the General Laws, an extension of time until June 1, 1957 is hereby granted for the filing of all returns, lists and reports of income payments made during the calendar year 1956, which are required by said section.

JOHN DANE, JR., *Commissioner*
Department of Corporations and Taxation

January 8, 1957

Public Document No. 144

THIRTY-SECOND REPORT

Judicial Council of Massachusetts for 1956

CONTENTS OF THIS REPORT

The Commonwealth of Massachusetts

DECEMBER, 1956.

To HIS EXCELLENCY, CHRISTIAN A. HERTER
Governor of Massachusetts

In accordance with the provisions of section 34B of chapter 221 of the General Laws (Ter. Ed.) we have the honor to transmit the thirty-second annual report of the Judicial Council for the year 1956.

FRANK J. DONAHUE, *Chairman,*
FREDERIC J. MULDOON, *Vice-Chairman,*
STANLEY E. QUA,
JOHN E. FENTON,
JOHN C. LEGGAT,
ELIJAH ADLOW,
KENNETH L. NASH,
CHARLES W. BARTLETT,
LIVINGSTON HALL,
ERNEST H. ROSASCO.

Acts of 1924, Chapter 244

As Amended by St. 1927, c. 923, St. 1930, c. 142, and St. 1947, c. 601

Now Appearing as G. L. (Ter. Ed.) Ch. 221, §§ 34A-34C

An Act providing for the Establishment of a Judicial Council to make a Continuous Study of the Organization, Procedure and Practice of the Courts.

Be it enacted, etc., as follows:

Chapter two hundred and twenty-one of the General Laws is hereby amended by inserting after section thirty-four, under the heading "Judicial Council," the following three new sections—*Section 34A*. There shall be a Judicial Council for the continuous study of the organization, rules and methods of procedure and practice of the judicial system of the commonwealth, the work accomplished, and the results produced by that system and its various parts. Said council shall be composed of the chief justice of the supreme judicial court or some other justice or former justice of that court appointed from time to time by him; the chief justice of the superior court or some other justice or former justice of that court appointed from time to time by him; the judge of the land court or some other judge or former judge of that court appointed from time to time by him; the chief justice of the municipal court of the city of Boston or some other justice or former justice of that court appointed from time to time by him; one judge of a probate court in the commonwealth and one justice of a district court in the commonwealth and not more than four members of the bar all to be appointed by the governor, with the advice and consent of the executive council. The appointments by the governor shall be for such periods, not exceeding four years, as he shall determine.

Section 34B. The Judicial Council shall report annually on or before December first to the governor upon the work of the various branches of the judicial system. Said council may also from time to time submit for the consideration of the justices of the various courts such suggestions in regard to rules of practice and procedure as it may deem advisable.

Section 34C. No member of said council, except as hereinafter provided, shall receive any compensation for his services, but said council and the several members thereof shall be allowed from the state treasury out of any appropriation made for the purpose such expenses for clerical and other services, travel and incidentals as the governor and council shall approve. The secretary of said council, whether or not a member thereof, shall receive from the commonwealth a salary of five thousand dollars.

MEMBERS OF THE COUNCIL

Frank J. Donahue of Boston, *Chairman*
Frederic J. Muldoon of Westwood, *Vice-Chairman*

Stanley E. Qua of Lowell
John E. Fenton of Lawrence
John C. Leggat of Lowell
Elijah Adlow of Boston
Kenneth L. Nash of Weymouth
Charles W. Bartlett of Dedham
Livingston Hall of Concord
Ernest H. Rosasco of North Adams

Frank W. Grinnell, *Secretary*, 60 State St., Boston

THIRTY-SECOND REPORT OF THE JUDICIAL COUNCIL OF MASSACHUSETTS

To His Excellency

CHRISTIAN A. HERTER,

Governor of Massachusetts

The Judicial Council was created by St. 1924, Chapter 244 *(See copy printed on opposite page)*, "for the continuous study of the organization, rules and methods of procedure and practice of the judicial system of the Commonwealth, the work accomplished and the results produced by that system and its various parts."

In 1925, the legislature also submitted the following request to the council.

1925 RESOLVES, CHAPTER 27

"Resolved, That the judicial council is hereby requested to investigate ways and means for expediting the trial of cases and relieving congestion in the dockets of the Superior Court, and, among other things . . . measures for discouraging frivolous appeals; measures for requiring parties to frame issues in advance of trial by greater specification in the declaration of what the plaintiff in good faith claims and greater specification in the answer of what the defendant admits or in good faith denies, with suitable penalties for frivolous or unfounded allegations and denials; ways and means for encouraging, so far as consistent with constitutional rights, trials without jury . . . and any other ways and means that may appear feasible to said council for improving and modernizing court procedure and practice so that, consistently with the ends of justice, the proverbial delays of the law and attendant expense, both to litigants and the general public, may be minimized. (Approved April 24, 1925.)"

CHANGES IN THE COUNCIL

Since the last report Ernest H. Rosasco of North Adams was appointed by Your Excellency as a member of the Council to fill the vacancy caused by the resignation of Frederick M. Dearborn, Jr. on acceptance of another position. The term of Hon. Frank L. Riley of Worcester, former chairman of the Administrative Committee of the District Courts, expired in July after 16 years of service as a member of the Council. Hon. Kenneth L. Nash of Weymouth, present chairman of the Administrative Committee of the District Courts, was appointed to the Council in his place.

In July, Hon. John C. Leggat of the Middlesex Probate Court and chairman of the Administrative Committee of the Probate Courts, and Frederic J. Muldoon, vice-chairman of the Judicial Council, were each re-appointed for terms of four years. In September, Hon. Stanley E. Qua of Lowell, former Chief Justice of the Supreme Judicial Court, was appointed by the present Chief Justice as a member of the Council to succeed Hon. Louis S. Cox, a former Justice of the Supreme Judicial Court who retired after twelve years of service on the Council.

Recommendations Adopted in 1956

During the last session the legislature adopted, either verbatim, or in substance, the following recommendations of the Council in

Chapter 258, to protect land titles from obsolete rights of entry and possibilities of reverter. (For reasons, see 31st report, p. 19.)

Chapter 305, to protect land titles from ancient leases. (For reasons, see 31st report, p. 24.)

Chapter 348, to protect land titles from certain formal defects. (For reasons, see 31st report, pp. 17 and 53.)

Chapter 302, eliminating the requirement of a jury claim for removal of certain civil cases from the District Courts to the Superior Court. (For reasons, see 31st report, pp. 11-12.)

Chapter 313, as to rules to regulate the forms of pleading in civil cases. This act was recommended in the 30th report for reasons there stated (pp. 14-16). It was renewed in our 31st report and was supported this year by the Judicial Survey Commission and by Your Excellency (see House 2620) and passed.

Bills Recommended and Favorably Reported by the Judiciary Committee But Not Enacted

1. A bill for a moderate fee of $15.00 for a claim of jury trial. In our 31st report (pp. 9-10) we said:

"There is no one way of dealing with congestion.

"Looking at the picture painted by the facts, we think it quite obvious that a jury fee would operate as a 'stop, look and listen' sign before they indulged their common habit of claiming an unwanted jury trial at great public expense and delay of other litigants. Such an experiment was recommended more than 20 years ago when congestion and the clamor about it was as great as it is today. In the 29th and 30th reports we stated our belief that such a jury fee would reduce the number of jury claims by attacking delay and congestion 'at its source.' We shall never find out until we try.

"The Judiciary Committee has reported favorably more than once.

"As one method of approaching congestion and delay we again renew the recommendation of the following

"DRAFT ACT

"'SECTION 1. Section 4 of Chapter 262 of the General Laws, as most recently amended by Section 2 of Chapter 119 of the acts of 1950, is hereby further amended by inserting after the fourteenth paragraph, the following paragraph:

"'For filing a claim for jury trial or a motion to frame issues in the superior court for jury trial or for entry in the superior court of such issues framed by the land court or by a probate court, and transmitted to the superior court, for trial, fifteen dollars.

"'SECTION 2. This act shall take effect on September first in the current year.'"

In 1955, the bill which was recommended in the 30th report, p. 12, was reported as House 2733, recommitted and again reported "ought to pass" but referred to the next session. The same bill was reintroduced by Your Excellency by special message (H. 2943), but was referred to the next session by the House.

This year the bill which was again recommended was also recommended by the Judicial Survey Commission and by Your Excellency (see report, H. 2620, p. 7), but again failed of passage.

We still believe in attacking congestion "at its source." We believe the bill is a reasonable experiment to check congestion. We shall never find out until we try. We, therefore, again recommend the

DRAFT ACT
(As printed above.)

2. A bill providing for limited oral depositions in the Superior Court before trial (see 30th report, pp. 12-14).

In our 31st report (pp. 11-12) we quoted from our 30th report as follows:

"A form of flank attack on congestion was suggested 34 years ago by the Judicature Commission, which we have renewed, in a much more limited form, based on the obvious fact that the sooner the facts can be ascertained the sooner a case will disappear or be disposed of by settlement or otherwise. Accordingly, we renew the recommendation which we made in our 29th Report as an experiment in the Superior Court only, for limited oral depositions, before trial. In the rules of the Federal courts and in other states, this practice has, for years, been allowed even as to all witnesses. We recommend a more limited act applicable only to a party, his agent, servant or employee.

"'DRAFT ACT

"'Printed on pp. 13-14 of the 30th Report.'"

If this practice has worked successfully for years in other jurisdictions, where they practice law as much as they do in Massachusetts, we see no reason why it should not work here. Again

we shall never find out until we try. We again renew the recommendation of the

DRAFT ACT

(As printed on pp. 13-14 of the 30th Report.)

3. A bill to provide for limited exceptions by the Commonwealth in criminal cases. In our 30th report and again in our 31st report, p. 49, we recommended this bill (see 31st report, p. 49), after reference to the statutes of the United States and of a number of other states allowing exceptions by the government to a limited extent on questions of law in criminal cases. We also referred to the Model Code of Criminal Procedure, prepared by the American Law Institute. While the Council were divided on the advisability of adopting the unlimited practice of Connecticut they were and are still unanimous in recommending government exceptions on the questions of law whether an indictment or information has been legally quashed or dismissed; whether a case has been illegally taken from the jury and a verdict directed for the defendant, and whether an illegal sentence has been imposed, and to that end again recommend the following:

DRAFT ACT

Section 31 of chapter 278 of the General Laws as amended by the chapter 384 of the acts of 1953 is hereby amended by adding at the end thereof the following sentence:—

"Exceptions upon questions of law arising on the quashing or dismissing by the court of an indictment or information; a directed verdict for the defendant; or an illegal sentence may be taken by the Commonwealth in a criminal case in the same manner and to the same effect as if taken by the defendant and when so taken shall be governed by this section. Pending the prosecution and determination of the exceptions the defendant may be admitted to bail on his own recognizance."

The provision for release on the defendant's own recognizance is similar to that in the Federal statute quoted in our 29th report (p. 45) where the whole subject is discussed with references to opinions and to statutes in other jurisdictions.

This year the bill was reported by the Judiciary Committee but failed of passage.

We again recommend the draft act (as printed above).

4. A bill relative to the death statutes, recommended in 1955 (see 31st report, p. 26). This year the bill was reported by the Judiciary Committee as House 2824, but failed of passage. See infra p. 53, for our recommendation of this bill in an amended form.

BILLS RECOMMENDED, BUT NOT FAVORABLY REPORTED

There were four of these.

A bill for concurrent jurisdiction of the Supreme Judicial and the Superior Court. (For reasons, see p. 8, 31st report.) A bill was recommended and favorably reported in 1955, but not reported this year.

A bill, relative to venue in District Courts, Senate 603 of 1954, rejected in the Senate (see 30th report, p. 17). This was also reported in 1955, but not this year.

A bill to prohibit televising testimony.

A bill for a jury commission in a limited district.

Negative Recommendations on Bills Referred to the Council for a Report in 1955

The following negative reports on bills referred in 1955 were followed by the legislature. The reasons for each negative report appear in the pages of the 31st report referred to below (of 1955).

House 1607 (of 1955), for "a supplementary remedy" for injuries in industry—report, p. 33.

House 1115 (of 1955), as to examination of jurors—report, p. 35.

House 1117 (of 1955), to permit a verdict of 10 jurors in civil cases —report, p. 36.

House 2144 (of 1955), relative to inheritance by illegitimate children and their relatives—report, p. 42

House 1846 (of 1955), relative to appointment of attorney by insurance commissioner in certain cases—report, p. 43.

House 616 (of 1955), relative to certificates after change of name—report, p. 44.

Reports Requested by the Legislature in 1956

This year the subject matter of the following twenty-one bills was referred to the Council with a request for a report.

House 1967, relative to equity practice. (Referred by Resolves, Chapter 55.)

House 2620 (page 7), recommendation of the Judicial Survey Commission to extend the general rule making authority of the Supreme Judicial Court. (Referred by Resolves, Chapter 126.)

House 2848, to limit liability for accidents from the lawful use of radio-active and fissionable materials to cases of negligence. (Referred by Resolves, Chapter 117.)

House 964 and Senate 272, relative to protect land titles by the filing of zoning ordinances, etc. (Referred by Resolves, Chapter 10.)

House 1589, to protect land titles from ancient mortgages. (Referred by Resolves, Chapter 44.)

Senate 274, to limit dower and curtesy to land owned at death of the deceased spouse. (Referred by Resolves, Chapter 16.)

House 1131, relative to mortgages for the benefit of creditors. (Referred by Resolves, Chapter 43.)

House 2189, as to service on foreign corporations. (Referred by Resolves, Chapter 49.)

House 1998 and House 2388, relative to gifts of securities to minors. (Referred by Resolves, Chapter 47.)

House 2197, to increase the number of peremptory challenges of jurors in civil and criminal cases. (Referred by Resolves, Chapter 26.)

House 720, relative to furnishing medical reports in motor vehicle injury cases. (Referred by Resolves, Chapter 32.)

House 1115, for the disclosure of witnesses by the government before trial in criminal cases. (Referred by Resolves, Chapter 54.)

House 376, 819, 1110, 1114 and 1336, relative to representation of indigent persons charged with crime by a public defender or other methods. (Referred by Resolves, Chapter 63.)

House 1973, to amend Section 15 of G. L. Chapter 152, relative to suits against 3rd persons under the Workmen's Compensation Act. (Referred by Resolves, Chapter 117.)

Senate 243, relative to the Statute of Limitations in certain cases of death following personal injury. (Referred by Resolves, Chapter 49.)

House 1572, relative to the filing in court of writs in civil actions before the return day. (Referred by Resolves, Chapter 78.)

House 2375, for a motion session in the Superior Court in Lowell. (Referred by Resolves, Chapter 72.)

Senate 435, relative to an interstate compact on interpleader. (Referred by Resolves, Chapter 79.)

We discuss the various matters thus referred in this report.

HOUSE 1967 AS TO EQUITY PRACTICE

(Referred by Resolves Chapter 55)

This resolve reads

Resolved, That the judicial council be directed to investigate and study the merit and practical advantage to eliminating all existing procedural distinctions between actions at law and suits in equity to the end that the equitable

defence of "adequate remedy at law" be abolished and to include its conclusions and recommendations in respect thereto, with drafts of such legislation as may be necessary to give effect to same in its annual report for the current year.

No specific bill is referred.

The resolve refers to "procedural distinctions" and by those words seems to call for consideration of the advisability of applying in state practice the federal rule providing for one form of action.

When the Federal rules are suggested for state practice the first thing to remember (generally overlooked by proponents) is that those rules are for one kind of court—the district courts of the United States. Wholesale application of a Federal rule would not fit our system of courts with varying jurisdiction—notably our district courts which have unlimited jurisdiction of common law actions but no equity jurisdiction (except that of "equitable process after judgment" known as "supplementary process"). The S. J. C., Superior Court, Land Court and Probate Courts all have equity jurisdiction unlimited in the first two and within their fields in the last two. Any procedural changes must, therefore, be considered in relation to their applicability to these several courts.

The purpose expressed, however, of abolishing the defense of "an adequate remedy at law" is broader than procedure. It has involved jurisdiction in our history.

The answer to this question involves some consideration of the slow growth and peculiar political history of equity in Massachusetts due to prejudice resulting from lack of familiarity with the nature and purpose of equitable remedies against the person to compel him to do what he ought to do as distinguished from a suit at law merely for damages for not doing it. The long lack of, or failure to provide for the exercise of, equitable remedies undoubtedly resulted in many instances of injustice during the 188 years from the time of the Province Charter of 1692 to the act of 1877 (St. 1877 Chapter 178, now G.L., Chapter 214, Section 1) recognizing jurisdiction "in all cases and matters of equity cognizable under the general principles of equity jurisprudence." This prejudice continued in spite of the writings and proposals of Mr. Justice Story and Erastus Worthington of Springfield as early as 1810 and Chief Justice Parker and others at a later period. The story is briefly outlined in 38 Massachusetts Law Quarterly No. 3 for August 1953, pp. 39-43.

The discussion of the defense, not as a procedural, but as a jurisdictional matter, goes back more than one hundred years to 1853. In that year, two years after the Practice Act of 1851-52, the Commissions on the Practice Act filed a now forgotten report on Equity

Practice (Senate Document 67 of 1853) with a Draft Act. The Commissioners said in their report, after referring to the limited equity jurisdiction and its then peculiar procedure that they did not consider it "within our province" to make any suggestions in regard to the extent of the equity jurisdiction which ought to exist within the Commonwealth. Taking this jurisdiction as it exists, we have simply attempted to assimilate the procedure under it to that in suits at law."

They submitted a bill that suits within the then existing jurisdiction should be by actions of contract or tort with a prayer "for relief in equity."

This bill was not adopted but in 1855 and 1856 jurisdiction was extended to cover fraud, accident and mistake.

As a result of further discussion, Section 1 of Chapter 178 of 1857 provided

> "The supreme judicial court shall have jurisdiction in equity of all cases and matters of equity, cognizable under the general principles of equity jurisprudence; and in respect of all such cases and matters, shall be a court of general equity jurisdiction."

The immediate story of this statute appears in the Massachusetts Law Quarterly for August 1953, and more fully in an article by Woodruff in 1884 in five Law Quarterly Reviews (reprinted in the B. U. Law Review for June 1929).

An Act of 1883 extending general equity jurisdiction to the Superior Court (St. 1883, Chap. 223) contained in Section 17, the following:

> "Whenever an amendment is allowed in the superior court under the provisions of section forty-three of chapter one hundred and sixty-seven of the Public Statutes changing an action at law into a suit in equity or a suit in equity into an action at law, the superior court shall retain jurisdiction of said cause. And in all proceedings in the supreme judicial court or the superior court no action or suit shall be defeated on the ground that there is an adequate remedy at law or that the relief sought can only be obtained by a suit in equity, but such proceeding whether at law or in equity shall at any time before final judgment be amendable at the discretion of the Court and may be amended upon such terms as the court may determine."

Attached to the Act were simple forms of bill, answer and demurrer.

This Section 17 with its forms remained on the books until the Revised Laws of 1902. Following the opinion in Merrill v. Beckwith, 168 Mass. 72 (cited in the margin) the Commissioners dropped the forms and abbreviated and slightly revised the Section into Section 6 of Chapter 159 as follows:

"SECTION 6. No suit in equity in said courts shall be defeated on the ground that there is an adequate remedy at law, nor shall any action at law be defeated *on the ground that the relief sought can be obtained only by a suit in equity*, but such proceedings shall, at any time, before a final judgment or decree, be amendable at the discretion of the court upon terms."

When the General Laws were prepared in 1920 the section was amended so as to remove an apparent inconsistency in its wording, and the amended section was inserted in C. 231, the practice act, where it became S. 55. It would seem also that relief might be had under the more general provisions of S. 51. It is true that amendment from law to equity and vice versa is discretionary with the court, but it is almost a necessity that the court have discretion, as in other instances of amendment in order to prevent trifling with the court's processes for delay or other improper purposes. In practice amendments are freely granted to advance the cause of justice. The procedure is very simple and usually involves little or no expense.

The jurisdictional character of the distinction between proceedings at law and proceedings in equity is well brought out in the leading case of Parkway, Inc. v. United States Fire Ins. Co. 314 Mass. 647. The suggested change in the law could hardly result in simplification as long as the jurisdictions of the several courts remain as they are. The question whether a given proceeding was really at law or in equity would remain as a jurisdictional issue with the consequence that if a party relying upon supposed uniformity of procedure went into the wrong court he might discover his error only after the Statute of Limitations had run against him, leaving him without any remedy at all. This same kind of difficulty has occurred in cases under the so-called "Fielding Act." If the proposed change should be confined to the Superior and Supreme Judicial Courts the uniformity in actions at law which now exists in all courts would be lost. Another possible consequence of the change might be that questions would frequently arise as to whether or not a party might be entitled to a jury trial. At present the bar is generally content to accept the line between law and equity as indicating also the limits of jury trial as matter of right. If that line were wiped out would not serious questions as to those limits become the subject of frequent litigation? It seems to us that the proposed change is a fundamental and far reaching one; that in this Commonwealth it is inextricably bound up with questions of the jurisdictions of the several courts.

In the 27th Report the Council discussed at some length the defence of a "remedy at law" in cases of specific performance (p. 9) and recommended a draft statute (and repeated the recommenda-

tion in its 28th and 29th reports) which was eventually adopted as Section 1 of Chapter 439 of the Acts of 1954 as follows:

"SECTION 1. Chapter 214 of the General Laws is hereby amended by inserting after Section 1 the following section:—

SECTION 1A. The fact that the plaintiff has a remedy at law for damages shall not bar a suit in equity for specific performance of a contract, other than one for purely personal services, if the Court finds that no other existing remedy, or the damages recoverable thereby, is in fact the equivalent of the performance promised by the contract relied on by the plaintiff, and the Court may order specific performance if it finds such remedy to be practicable. If performance is not decreed, damages may be determined in the proceeding, and if the defendant claims a jury on that issue, the issue shall be framed and referred for jury trial."

There are many other instances in which a remedy may be had in equity without any amendment at all. See for example Milkman v. Ordway 106, Mass. 233, Rosen v. Mayer 224 Mass. 494 and Reynolds v. Grow, 265 Mass. 578.

The result of the statutory history and the illuminating article by Woodruff (referred to above) is that the defense of an adequate remedy at law is not a procedural but a jurisdictional matter, that the Court has jurisdiction to deal with such a defense, as a matter of sound judicial discretion in the light of the facts and within the "limit of effective legal action" and that further legislation on the subject would be unwise and unnecessary.

A PENDING THREAT TO THE WHOLE SYSTEM OF EQUITY

We find from the legislative journals that a proposed constitutional amendment (H. 1050) was reported "ought to pass" by a committee and that this report was filed by each House, but was not acted on, or submitted to, a joint convention of both Houses. This proposed amendment (H. 1050) reads as follows:—

"ARTICLE XV. In all controversies concerning property and in all suits between two or more persons, *including equity*, the parties have a right to a trial by jury; and this method of procedure shall be held sacred."

We respectfully protest against this proposal which would "hamstring" all equity and make Massachusetts a backward state in the administration of justice. We know of no such provision anywhere. It would reverse the law as carefully explained by the Court in Parker v. Simpson, 180 Mass. 334, and confuse and obstruct the whole field of modern equity recognized in Section 1 of Chapter 214. It would put Massachusetts back 100 years in the administration of justice.

PROPOSAL TO EXTEND THE GENERAL RULE-MAKING POWER OF THE SUPREME JUDICIAL COURT AS APPEARING IN H. 2620 (P. 7)

(Referred by Resolves Chapter 126)

H. 2620 is the report of the Judicial Survey Commission with an introductory message by His Excellency the Governor in support of the commission. The bill thus recommended and referred to the Judicial Council (appearing on page 7) reads:

THE SURVEY COMMISSION'S DRAFT ACT ON RULE-MAKING

(Referred to the Council)

SECTION 1. Section 3 of chapter 213 of the General Laws, as amended, is hereby further amended by adding at the end thereof the following paragraphs:

The supreme judicial court shall have the power to prescribe, by general rules, the forms of process, writs, pleadings and motions, and the rules of pleading, practice and procedure, in civil and criminal cases and proceedings in all the courts of the Commonwealth.

Such rules shall not abridge, enlarge or modify any substantive right and shall preserve the rights of all persons as declared by the constitution of the Commonwealth, including the right of trial by jury as declared in Articles XII and XV thereof.

Before any such rules are adopted the supreme judicial court shall appoint an advisory committee consisting of representatives of the relevant courts and at least eight members of the bar of the Commonwealth, to assist the court in considering and preparing such rules as it may adopt. Before any such rule is adopted by it, the supreme judicial court shall make public copies of the proposed rule for the consideration of the bench and bar and people of the commonwealth and give due consideration to such suggestions as they may submit to it. No rule adopted pursuant to this section shall be effective less than sixty days after its promulgation by the court.

Nothing in this section shall in any way supersede or repeal any rule heretofore prescribed by any court of the Commonwealth, or limit the power of any such court to make and amend its rules, except insofar as they are in conflict with general rules prescribed by the supreme judicial court under this section.

All present laws relating to the forms of process, writs, pleadings and motions, and to pleading, practice and procedure, shall be effective as rules of court until modified or superseded by subsequent rule of the supreme judicial court, and upon the effective date of any rule adopted pursuant to this section such laws, insofar as they are in conflict therewith, shall thereafter be of no further force and effect.

SECTION 2. This act shall not abridge the right of the General Court to enact, modify, or repeal any statute, or modify or repeal any rule of the supreme judicial court adopted pursuant thereto.

The statement by the Survey Commission in support of the bill appears on page 37 of H. 2620 as follows:

"We recommend that broad rule-making powers be given to the Supreme Judicial Court, reserving to the legislature the power to modify or repeal any rule after its adoption. Past experience has shown that the legislature, with thousands of bills to consider each year, has not accomplished the improvement and modernization of court procedures.

"Grant of full rule-making power has been termed by a former president of the American Bar Association as 'indispensable to the most thoroughgoing and effective realization' of that Association's program for removing popular dissatisfaction with the administration of justice in the United States.

"Proposals to this effect have been under consideration in Massachusetts for a number of years. In one form or another, such broad rule-making powers have already been granted to the highest courts of about half of the states in this country."

A fuller statement appears on pages 87-88.

While there was no dissent from the bill so far as extending the rule-making power was concerned, there was dissent in a minority report as follows: (pp. 48-49)

"As to the draft of a rule-making bill, I think it would be wiser to omit from the statute a requirement of a committee and certain specified incidental details. Such a mandatory provision, in my opinion, has no place in such a statute. I do not doubt that the court would need, and would ask for, the assistance of other judges and of the bar and would get it, as it has in the past; but I think the draft act should be revised to omit the mandatory requirements above referred to, which seem to me expressed in such a way as to cause unnecessary and unforseen difficulties to be avoided in the public interest."

This matter is not new in Massachusetts. A bill was filed in 1939 by a committee of Judicial Procedure of the Boston Chamber of Commerce and vigorously supported. It passed the Senate and was defeated in the House. The story is told (with a copy of the short bill) in the 15th Report of the Judicial Council (reprinted in Mass. Law Quarterly for Jan.-March 1940, page 11) and in more detail with the debate in the House leading to the defeat of the bill summarized, in the "Quarterly" for April-June 1939, pp. 8-15.

The substance of the bill of the Survey Commission referred to the Council (above quoted) is patterned on the act of Congress of 1934 authorizing the Supreme Court of the United States to make rules for the Federal Courts superseding legislative rules but subject, of course, to revocation or revision by Congress.

We are aware of the discussion of rule-making throughout the country since the Federal Acts for civil procedure and criminal procedure. We are mindful of the fact that the Judicial Council

in 1939 voted in support of a bill (which was shorter and different from the bill now referred). We have considered the statement of reasons by the Survey Commission in support of the bill, but we think there is another side to the problem. Important and apparently effective changes in practice are now being tried in the courts and some important legislation about the courts has been adopted this year as recommended by the Survey Commission. We think these new changes should be given time to develop. While the time may come in future when with its increasing variety of burdens the legislature may find it advisable to relieve itself by extending the rule-making power of the court in the manner proposed, we are not convinced that the time has yet arrived when it is advisable to take this step. The majority of the Council (Mr. Hall dissenting) therefore, do not recommend the bill.

Minority Report of Mr. Hall

The General Court has asked the Judicial Council for its conclusions relative to extending the rule-making power of the Supreme Judicial Court. The undersigned, while a member of the Judicial Survey Commission, voted to recommend to the Legislature that broad rule-making powers be given to the Court. As a member of the Judicial Council he remains of the same opinion.

Much more can be done by the courts in Massachusetts under existing law than has been done. Nevertheless, the limitation that new rules must be consistent with existing statutes will prevent consideration of some desirable changes.

The proposed grant of power to the Supreme Judicial Court would not prevent the other courts from exercising their own rule-making powers, so long as their action was not inconsistent with Rules adopted by the Court.

There is little reason to fear that the grant of rule-making power would lead to the automatic adoption of a set of rules closely patterned on the Federal Rules. Representatives from the Bench and Bar are provided on an Advisory Committee, to give careful consideration to any suggested changes, and insure a full public discussion thereon. Nor would the Court itself be likely to adopt any system of pleading and practice which was subject to serious opposition from the Bar generally. And even if the Court were ever to do so, complete power in the Legislature is reserved to modify their provisions.

Further, the General Court itself would benefit from the proposal. Drafts of proposed legislation on practice and procedure would warrant serious consideration by the Committee on the

Judiciary only after they had been considered by the Supreme Judicial Court and its Advisory Committee, and had either been adopted or rejected.

LIVINGSTON HALL

H. 2848, RELATIVE TO LIABILITY IN TORT ARISING FROM THE LAWFUL USE OF RADIOACTIVE OR FISSIONABLE MATERIAL

(Referred by Resolves Chapter 117)

This bill (H. 2848) reads:

"AN ACT RELATING TO LIABILITY ON TORT ARISING FROM THE LAWFUL USE OF RADIOACTIVE OR FISSIONABLE MATERIAL.

"SECTION 1. Liability in tort for bodily injury or death or damage to the property of others shall not be imposed, without proof of negligence, upon persons who lawfully and under proper license produce, possess, use or dispose of radioactive or fissionable material.

"SECTION 2. The term 'persons' means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, the Commonwealth of Massachusetts, or any political subdivision thereof; and (2) any legal successor, representative, agent or agency of the foregoing.

"SECTION 3. This act shall take effect upon its passage."

The purpose of the bill is to guard the future peaceful use of atomic energy in Massachusetts in industry or otherwise, if lawfully licensed, etc. from being obstructed or discouraged by the danger of absolute liability for accident under the doctrine of *Rylands v. Fletcher,* L.R. 3 H. L. 330, and other cases (some in Massachusetts) in which a reservoir leaked or sewage overflowed on neighboring land. *Rylands v. Fletcher* decided in England in the middle of the 19th century appears to have been variously interpreted by American Courts. Later American tort thinkers have re-studied the subject. See Prof. Warren Seavey in 65 Har. Law Review 988 in 1952.

Prof. William L. Prosser, in one of his "Cooley" lectures in Michigan in 1953 discussed at length "The Principle of *Rylands v. Fletcher.*" (See "Selected Topics on the Law of Torts" 135 at p. 153). Compare *Ball v. Nye,* 99 Mass. 582 and other cases cited by Prosser and opinion of Rugg, C. J. in *Kaufman v. Boston Dye House,* 280 Mass. 161 at pp. 166-167.

The latest discussion appears in an article by G. H. L. Fridman in the Canadian Bar Review for August 1956 entitled "The Rise and Fall of Rylands v. Fletcher."

As to the lawful peaceful use of atomic energy in a community which needs it, the bill presents a far-reaching question of policy involving not only varied public needs but also probable broad problems of future litigation, practice and procedure in a hitherto unfamiliar field of fact and law.

We live in constant danger of one kind or another in an increasingly dangerous world with the inevitable advance of modern scientific study of dangerous forces and materials. The potentially devastating effects of the accidental escape of atomic energy seem so much greater than those of dangerous explosives that they would seem to approach the field of apparently uncontrollable hurricane or flood damage. The constant accumulation of such dangers may threaten the solvency and stability of entire communities to such an extent as to exceed what Dean Pound once described as "the limit of effective legal action." It is a field of hazardous but necessary risk if we survive the threat of warlike use of the hazardous forces.

What should, or can, be done about it?

The problem of insurance and its possible limitations in extensive catastrophies arises.

While opinions of thoughtful lawyers differ the following statement submitted to us by a student of the subject seems pertinent:

> "At the present time, the insurance industry has provided the greatest amount of protection against the risk of atomic injury that has ever been made available: $65,000,000 for a single accident. However, in the unlikely event of an atomic accident, damages might far exceed $65,000,000. Therefore, the Congressional Joint Committee on Atomic Energy reported out the Anderson bill to provide $500,000,000 U. S. Government insurance on top of the $65,000,000. This bill did not pass, but it seems almost certain to be adopted at the next session of Congress.
>
> "If the Anderson Act were on the books, atomic industry would not be troubled by the prospect of absolute liability. A Massachusetts statute requiring proof of negligence would therefore provide no inducement except in so far as it might influence somewhat the rates charged by the private insurance companies. On the other hand, the statute might produce a situation that would be very annoying to the residents of this Commonwealth, to understate the matter."

It seems to us too early to experiment with legislation in this unfamiliar field. We, therefore, do not recommend H. 2848 or any other legislation on the subject at this time.

So far as Section 2 of H. 2848 is concerned the Commonwealth could not be sued without its consent and presumably could limit liability of its political sub-divisions so that Section 2 would seem to need revision in any event.

IMPROVING OUR LAND TITLE RECORDING SYSTEM

Introductory Statement

The Massachusetts legislature has taken a leading part during the last few years in the gradual solution of one of the most difficult legal problems which, for years, has faced the legislatures of all the States in the Union. The problem is to assure that our land title recording system serves effectively the public needs notwithstanding the great increases in volume of records and complexity of titles over the 300 years and more since the system was designed and adopted, and will serve effectively public needs now foreseeable due to increase in frequency of sales, mortgages and other title transactions resulting from increasing mobility of population and business and shifts from rural to urban land patterns. Inefficient functioning of our recording system is in effect a hidden and unnecessary tax on all home owners and land owners. The importance to all our people of efficient functioning can hardly be overestimated.

The urgent public need both for greater reliability of records and for shorter safe periods for searches has been recognized by the Massachusetts legislature by our statutes relating to obsolete attachments of a few years ago, by last year's acts on formal defects, entries, reverters and ancient leases, and by the reference to the Judicial Council for study of the bills to be discussed later in this report (see The Titles Are Clearing—Boston Bar Bulletin—Sept. 1956). Similar needs in other states are shown by the Marketable Title Acts, the Title Standards movement, the publication by Paul E. Basye in 1953 of his comprehensive treatise "Clearing Land Titles," and the setting up in 1954 in the Section of Real Property, Probate and Trust Law of the American Bar Association, of a separate Committee on Improvement of Conveyancing and Recording Practices.

HOUSE 1589—TO LIMIT THE TIME WITHIN WHICH MORTGAGEES MAY FORECLOSE MORTGAGES

This bill reads—

"Section 1. Section 1 of chapter 244 of the General Laws is hereby amended by adding the following sentence at the end thereof:—No mortgagee may foreclose a mortgage dated prior to January first, nineteen hundred, under the terms of this section from and after January first, nineteen hundred and sixty, unless the mortgagee causes said mortgage, or a copy thereof, to be re-recorded prior to January first, nineteen hundred and sixty.

"SECTION 2. Chapter 244 of the General Laws is hereby amended by inserting after section 15, the following section:—

"SECTION 15A. No mortgagee may foreclose a mortgage dated prior to January first, nineteen hundred, by foreclosure by sale from and after January first, nineteen hundred and sixty, unless the mortgagee causes said mortgage, or a copy thereof, to be re-recorded prior to January first, nineteen hundred and sixty."

In the introductory statement on page 20 of this report we have described the growing need of correcting deficiencies in our recording system. Protection of titles against obsolete mortgages is an important part of this modern problem. The bill referred has been compared with legislation in other states, several drafts and redrafts have been prepared and repeatedly discussed by the Council before reaching the form of bill recommended below.

In addition to what is said in the introductory statement above we call attention to the following picture of the practical situation.

The fact that more and more people cannot afford extended title searches leads to shorter searches.

Title attorneys probably cannot be held negligent if they follow the customs of the community as to length of search. The resultant risks of prior interests not disclosed unavoidably fall on owners and investors who often do not fully appreciate them, and when the interests later come to light, both the individuals affected and the reputation of the bar suffer, whether the interests remain enforceable or not. The more the risks of obsolete interests, the less is the value of searches to the purchaser or investor, the less he is justified in paying for searches, the more the pressure for abbreviated searches, and the more the risk again resulting, so that we have in effect a vicious circle. Already, it is reputed, some banks have been forced to accept on practically a self insurance basis, much shorter searches than are customary or now generally considered "safe."

On the other hand title attorneys cannot keep from being influenced by fears of what the most meticulous of other title advisors may do if next called on to pass the same title, however remote the practical risks of dispossession may be. The cumulative effect of these fears over the years means that there are always some whose standards are tighter than those of a generation or two earlier, and that the chances of challenge by the most meticulous gradually increase. Again we have a vicious circle that impairs the ability of the recording system to meet the public needs. And the combination of these trends means an increasing diversity of standards being applied, and resultant confusion and lack of efficient operation of the system.

The problem of drafting a reasonable statute of limitations for the foreclosure of mortgages is similar to that of other familiar statutes barring the use of a remedy in the reasonableness of the provisions. Today after 300 years the need of re-recording of evidence to bring the document within the reach of a reasonable period of search is like the original need of recording.

After considering the various experimental practices adopted in other States and described in Basye's "Clearing Land Titles," we have come to the conclusion that the advantage of simplicity for all concerned including the administrative problem of lending institutions, makes a straight 50 years from the original recording the best starting point for existing as well as future mortgages with periods provided for re-recording of evidence at intervals to keep the existence of the mortgage within the reasonable period of search.

We do not think that there should be any serious question of constitutionality under the act which we submit nor that the legislature would be held powerless to deal with existing mortgages *where reasonable and fair means for them to protect their interests by notice or action are afforded,* cf. Basye, C. 11, and Scurlock Retroactive Legislation Affecting Interests in Land—1953. A later owner *in possession* after customary search who is threatened by an ancient mortgage he knew nothing about and could not reasonably be expected to find, may well wonder whether the statutory recording system which permits such result does not deprive *him* of his interest unwarrantably. It would seem that the legislature can require such recording as could reasonably be expected to warn him of the claim.

We recommend the following

DRAFT ACT

AN ACT TO PROTECT LAND TITLES AGAINST OBSOLETE MORTGAGES

Section 1. Chapter 260 of the General Laws is hereby amended by adding at the end thereof the following sub-title and sections:

Limitation of Mortgage Foreclosures

"SECTION 33. No power of sale in any mortgage of real estate shall be exercised, and no entry shall be made nor possession taken nor proceeding begun for foreclosure of any such mortgage, after the expiration of a period which shall be fifty years from the recording of the mortgage unless an extension of the mortgage, or an acknowledgment or affidavit that the mortgage is not satisfied, is recorded within the last ten years of such fifty years. In case an extension of the mortgage or such an acknowledgment or affidavit is so recorded, the period shall continue until ten years shall have elapsed during which there is not recorded any further extension of the mortgage or acknowledgment or affidavit that the mortgage is not satisfied. The period shall not be

extended by reason of a longer period for maturity of the debt or obligation secured being stated in the mortgage or in any extension of the mortgage, or otherwise, or by non-residence or disability of any person interested in the mortgage or the real estate, or by any partial payment agreement, extension, acknowledgment, affidavit or other action not meeting the requirements of this section and Sections 34 and 35.

SECTION 34. No extension of the mortgage, and no acknowledgment that the mortgage is not satisfied, whether contained in a conveyance or in a separate instrument, shall be sufficient to extend the period specified in Section 33 unless it is executed by one or more persons appearing of record to own the real estate, or an interest in the real estate, then subject to the mortgage, and describes the mortgage sufficiently to identify the record of it, and states that the property is subject to the mortgage or that the mortgage is not satisfied. No affidavit that the mortgage is not satisfied shall be sufficient to extend the period unless it is executed by the holder of the mortgage, describes the mortgage sufficiently to identify the record thereof, names one or more persons then appearing of record to own the real estate, or an interest in the real estate, then subject to the mortgage, and states that the mortgage remains unsatisfied, and if the mortgage secures a promissory note or sum of money, the amount believed to remain unpaid. The Register of Deeds upon payment of the fee required by law shall record any such affidavit and any such acknowledgment contained in a separate instrument, and index it in the grantor index under the owner or owners named in the affidavit or executing the acknowledgment.

SECTION 35. For the purposes of Sections 33, 34 and 35, the term "mortgage" includes any deed of trust or other conveyance made for the purpose of securing performance of a debt or obligation, and no proceeding shall be considered begun until a memorandum as required by Section 15 of Chapter 184 has been recorded, and recording shall be in the Registry of Deeds for the county or recording district in which the real estate is situated. When any mortgage includes real estate or interests in different ownerships at the time of recording of an extension, acknowledgment or affidavit the recording shall be sufficient only for the real estate in which the owner or owners executing the extension or acknowledgment or named in the affidavit then appear of record to own an interest. When the real estate is situated in more than one county or district, recording in any county or district shall be sufficient only for the real estate there situated. Sections 33, 34 and 35 shall not apply in case of real estate registered by the Land Court, nor revive, preserve or extend any mortgage otherwise ineffective, nor affect enforcement of the debt or obligation otherwise than against the real estate mortgaged.

SECTION 2. The provisions of Sections 33, 34 and 35 of Chapter 260 of the General Laws added by Section 1 of this Act shall apply to mortgages recorded before the effective date of this Act as well as to those recorded thereafter, except that in case of mortgages recorded before the effective date of this Act the period specified shall not expire before January 1, 1960.

SECTION 3. This Act shall take effect on January 1, 1958.

SENATE 274—TO RESTRICT DOWER AND CURTESY TO LAND OWNED AT DEATH

(Referred by Resolves Chapter 10)

What Are Dower and Curtesy

"Dower" is a technical word describing a right of a surviving wife to 1/3 interest for her life in all land owned by her husband during the marriage and "Curtesy" describes a similar right of a surviving husband in his deceased wife's land. They are now provided for in G. L. Chapter 189 Section 1. The right to claim dower or curtesy does not begin until there is a valid marriage and does not end during the life of the married couple unless it is released in writing or is destroyed by a valid divorce (as provided by G. L. C. 208, S. 27) as amended in 1949.

These rights are not subject to the claims of creditors of the estate of the deceased. There are no such rights in personal property. All personal property is subject to the claims of creditors and under the present equal status of men and women each husband or wife can dispose of all his or her personal property without the consent of the other.

The Bill S. 274

(Recommended by a Majority of the Council)

The bill would limit dower and curtesy to land owned at the death of the deceased spouse as follows:

Section 1. Chapter 189 of the General Laws is hereby amended by striking out section 1 and inserting in place thereof the following section:—

Section 1. A husband shall upon the death of his wife, hold for his life one third of all land owned by her *at the time of her death.* Such estate shall be known as his tenancy by curtesy, and the law relative to dower shall be applicable to curtesy. A wife shall, upon the death of her husband, hold her dower at common law in land *owned by him at the time of his death.* Such estate shall be known as her tenancy by dower. *Any encumbrances on land at the time of the owner's death shall have precedence over curtesy or dower.* To be entitled to such curtesy or dower the surviving husband or wife shall file his or her election and claim therefor in the registry of probate within six months after the date of the approval of the bond of the executor or administrator of the deceased, and shall thereupon hold instead of the interest in real property given in section one of chapter one hundred and ninety, curtesy or dower, respectively, otherwise such estate shall be held to be waived. Such curtesy and dower may be assigned by the probate court in the same manner as dower is now assigned, and the tenant by curtesy or dower shall be entitled to the possession and profits of one undivided third of the real estate of the deceased from her or his death until the assignment of curtesy or dower and to all

remedies therefor which the heirs of the deceased have in the residue of the estate. *Except as preserved herein, dower and curtesy are abolished.*

Section 2. If it should be held that this act cannot constitutionally apply to existing rights of dower or curtesy, it shall nevertheless be fully effective except as to such existing rights.

The Purpose of the Bill

The purpose of the bill, like the purpose of other legislation or proposed legislation in recent years, is to reduce the title problems affecting the marketability of land whether by sale or mortgage.

History of Dower and Curtesy in Massachusetts

Originating during feudal days when the legal capacity of women was restricted and there was less personal property, dower existed to protect a widow by allowing her as an incident of marriage a life interest in 1/3 of her husband's land of which neither he nor his creditors could deprive her. With the changes of modern life and the expansion of personal property the practical need of dower and its consequent importance lessened. Even in the 18th Century Blackstone in his Commentaries noted that dower "became a great clog to alienations" and "was otherwise inconvenient to families." By the middle of the 19th Century legislatures had begun to provide alternative rights in the estates of husbands and wives for the survivor of more value than dower. In Massachusetts by St. 1854 C. 406 such rights were provided followed by a Section 4 as follows:—

> "The foregoing provisions of this act shall be in lieu of the widow's dower, at her election; and her election of the provisions of this act in preference to her dower shall be presumed, unless she file in the probate office her election to claim her rights of dower, in lieu of the provisions of this act, within six months of the date of the letters of administration."

This requirement of election within six months is still the law as appears in Section 1 of Chapter 189 and in the proposed bill (S. 274).

Since 1854 these rights in the personal and real estate in lieu of dower or curtesy at the election of the survivor have been gradually increased by legislation.

As a result of these better alternative rights claims of dower or curtesy have almost ceased as appears from reports of registers of probate. In some counties such as Berkshire and Bristol none have been filed for 18 or 20 years. In others very few. The practical situation today is stated by Newhall in his "Settlement of Estates," 3rd Ed. Section 183 at pp. 449-450 as follows:—

"When should the survivor claim curtesy or dower? The answer is, never except under special circumstances. Take for example the ordinary case of a man who leaves a widow and children. The widow takes one-third and the children the balance. If she claims dower, she receives one-third of the personal property, but in place of getting one-third of the real estate absolutely, she receives merely the use of it for life, since dower is only a life interest. Accordingly the only circumstances under which it is advisable to claim curtesy or dower are (1) if the deceased owned real estate, but died insolvent or so nearly so that the bulk of the real estate must be sold to pay the debts and expenses; and (2) if the deceased during his or her lifetime conveyed a considerable amount of real estate without procuring a release of curtesy or dower in the deed.

The reason for making the claim in (1) is that curtesy and dower take precedence over the rights of creditors, whereas the statutory rights described in the preceding chapter do not accrue until after the debts and other charges are paid. Consequently, if the estate is insolvent, or nearly so, it may be more advantageous for the survivor to claim curtesy or dower.

The reason in (2) is that if the deceased has conveyed away a considerable amount of real estate during his or her lifetime without obtaining a release of curtesy or dower, the survivor cannot claim statutory rights therein, but may claim curtesy or dower. It is easily possible that the curtesy or dower right in the parcels previously conveyed would more than offset the loss of statutory rights in the real estate of which the deceased died actually seized, and make the claim of curtesy or dower advisable. As against this, however, is the possibility of a suit against the estate for a breach of warranty in the deed by which the deceased originally conveyed the land, which might exhaust the personal property."

THE EFFECT OF DOWER AND CURTESY ON LAND TRANSACTIONS

On the other hand while seldom claimed it provides a problem for land owners and their legal advisers in connection with titles for various facts of increasing frequency in these days of migratory divorces of uncertain legality, separated and absconding or remarried spouses and uncertainties as to the fact of marriage or divorce.

Ordinarily, in the absence of any indication to the contrary, a lawyer has to assume that if a man says he is married and produces a deed with his "wife's signature," that he is telling the truth; and if he says he is unmarried that he is telling the truth; but as pointed out by the register of Hampshire County:

"A man who had dealt extensively in real estate, and always described himself as unmarried died leaving a widow in Texas."

There was another similar case in Middlesex County in which the unknown widow turned up from Italy while the "unmarried"

grantor was still alive. Such cases, of course, may cause trouble and loss for innocent purchasers or others dealing with the land. These results would not be possible under the proposed bill. Trouble from some other uncertainties above mentioned would also be eliminated by the bill. Such are the reasons in favor of the bill in the minds of many. Accordingly dower has been abolished or otherwise limited in about half of the states. They are found in Martindale-Hubbel and are more fully listed or referred to in the footnotes to Section 59 of Basye "Clearing Land Titles" (West Pub. Co., 1953), Patton on "Titles" and Scurlock "Retroactive Legislation Affecting Interests in Land" pp. 295-298.

It is for these reasons that the matter came before the legislature in the form of this bill to limit dower and curtesy.

The question of abolishing dower and curtesy has been discussed at the bar and occasionally before legislative committees for many years. The proposal has usually been for absolute abolition. The present bill (S. 274) does not do that. As pointed out in the introductory statement in the bills relating to land, with the passage of years more and more land title problems constantly arise to strangle land dealings while claims for dower have dwindled almost to the vanishing point because of the alternative rights provided in place of dower and curtesy. Chapter 29 of the 7th Edition of Crocker's "Notes on Common Forms" contains a historical review of the many changes as to the rights of husband and wife.

The question before the legislature is whether in the public interest now and in future the increasing burdens on land and their unfortunate affects—burdens which will never decrease but will continue to get constantly worse without legislative action—outweigh the dwindling importance of dower and curtesy.

On this question the Council is divided 8 to 2 but the majority (Mr. Bartlett and Judge Fenton dissenting) are of opinion that the long-range public interest of the Commonwealth calls for a modification of dower and curtesy by limiting them to land owned at the death and therefore recommend Senate No. 274 as printed.

Section 2 of S. 274 reads

> "If it should be held that this act cannot constitutionally apply to existing rights of dower or curtesy, it shall nevertheless be fully effective except as to such existing rights."

The reason for this Section is that the question has never been decided in Massachusetts as it has been in a number of other jurisdictions. The uncertainty in Massachusetts was referred to briefly in 40 Massachusetts Law Quarterly No. 4 (Dec. 1955 p. 35). As

illustrating the differences, in 1874 in Randall v. Kreiger 23 Wallace 137 at p. 148 the Supreme Court of the United States said,—

"During the life of the husband the right is a mere expectancy or possibility. In that condition of things, the law-making power may deal with it as may be deemed proper. It is not a natural right. It is wholly given by law, and the power that gave it may increase, diminish, or otherwise alter it, or wholly take it away."

In McNeer v. McNeer, 142 Illinois 388, in 1892 the Illinois Court held at p. 400 citing authorities

"that the right of dower, to which a married woman is entitled in her husband's real estate before his death, is not a vested interest, and may be changed by the legislature at any time before the death of the husband. Of course the same rule applies to the husband's right of dower in his wife's real estate under the law as it now stands. This view is in harmony with the decisions of the Federal Supreme Court, and of many of the States, and with the conclusions of most of the text writers. Bishop on Law of Married Women (Vol. 2, sec. 42) says: 'The wife's contingent right to dower in her husband's lands, should she survive him, is a valuable interest, but it is not a vested one. It is a contingency of which indeed the husband cannot at the common law bar her by his own act; yet being a contingency, and not a vested thing, a statute may constitutionally take it from her'."

This case was cited with others in Trustees of Schools v. Batdorf (6 Illinois 2nd 486, 130 N. E. 2nd 111, on Oct. 26, 1955) in support of an act limiting claims of reverter as follows:

"The legislature has modified or abrogated property rights less remotely expectant than these possibilities of reverter, and its action has been sustained. So legislation was upheld which retroactively affected inchoate rights of dower and curtesy. McNeer v. McNeer, 142 Ill. 388, 32 N. E. 681, 19 L. R. A. 256; Henson v. Moore, 104 Ill. 403. Similarly the Contingent Reminder Act (Ill. Rev. Stat. 1953, chapter 30, page 40), which terminated the right of the life tenant and the remainderman to destroy contingent remainders, has been applied to deeds and wills effective prior to adoption of the act."

On the other hand, in Massachusetts while it has never been decided, doubtful dicta have been expressed in Bullard v. Briggs 7 Pick. 533, at p. 538 and other cases, the latest being by Rugg, C. J. in Hanscom v. Malden, 220 Mass. 1 at p. 7 as follows:

"Although it has been held in some jurisdictions to be within the power of the Legislature to extinguish a wife's right of dower before it has become consummate, yet, whether such decisions are consistent with the law of this Commonwealth by which an inchoate right of dower is recognized as a property right, is open to grave doubt. Dunn v. Sargent, 101 Mass. 336, 340."

Section 2 of S. 274, therefore, leaves that question open for the Court to decide when occasion arises. Possibly the legislature may wish to ask the Court for an advisory opinion.

H. 964 AND S. 272 AS TO THE FILING OF ZONING ORDINANCES

(Referred by Resolves Chapter 10)

HOUSE 964

"AN ACT TO PROTECT THE MARKETABILITY OF TITLES TO LAND.

"Chapter 40A of the General Laws, is hereby amended by adding at the end of section 6 the following:—After the adoption of a zoning ordinance or by-law, or any amendments thereto, in a city or town under the provisions of General Laws, chapter forty and forty A, the city or town clerk shall cause to be filed forthwith with the register of deeds, and with the assistant recorder of the land court where the land lies, a certified copy of such ordinance or by-law or amendment, and the ordinance or by-law or amendment shall not become effective until such copy is so filed.

"Copies of all zoning ordinances or by-laws in effect at the date of the passage of this act shall also be filed by said city or town clerk with said register and assistant recorder within ninety days of the effective date of this act, and if not so filed the future operation thereof shall be suspended until so filed.

"Each register of deeds and assistant recorder shall maintain an index of all such ordinances, by-laws and amendments by the city or town, which may be combined with the index required by law to be kept under the provisions of General Laws, chapter one hundred and forty-one, sections eighty-one K to eighty-one GG."

SENATE 272

"AN ACT REQUIRING THE FILING OF ZONING ORDINANCES AND BY-LAWS WITH THE REGISTER OF DEEDS AND THE RECORDER OF THE LAND COURT.

"Section 6 of chapter 40A of the General Laws is hereby amended by adding at the end the following three sentences:—After the adoption of a zoning ordinance or by-law or any amendment thereto the city or town clerk shall file without fee, but not be required to record, an attested copy thereof with the register of deeds of the district in which such city or town lies and with the recorder of the land court. Copies of all zoning ordinances or by-laws in effect at the date of the passage of this act shall also be similarly filed by said clerk with said register and recorder. Such copies of zoning ordinances or by-laws and amendments thereto shall be kept by the register and recorder with the notices and rules and regulations required to be filed under section eighty-one X of chapter forty-one."

The purpose of both bills is that above quoted in the title of H. 964. Both relate to the same section 6 of G.L. Chapter 40A. The substantial difference is that H. 964 contains what are commonly called "teeth" in the form of a suspension of operation of a document until filed. S. 272 omits that provision and simply makes it the expressed official duty of the city or town clerk to comply with the act.

These bills grew out of the growing uncertainties as to the use of land as a result of expansion of municipal control during the past 25 years or more by approximately 300 municipal legislative and administrative bodies which have made it constantly more difficult and expensive for one who wants to buy or sell or mortgage land to find out what there is to buy or sell or mortgage. Several helpful statutes to meet this problem were passed in recent years to relieve this difficulty. Such statutes are to help the landowners to get good informed advice from their lawyers instead of inadequate advice because of increasing difficulties of getting the necessary information on which to advise. The problems of land titles get worse every year all over the Nation and Massachusetts has taken the lead in the last two or three years. Formerly a lawyer after examining the records in the Registries of Deeds and of Probate could advise his client as to the condition of a title. That is not so today.

If the lawyer were to tell the client that the title was clear except for the impact of municipal laws, regulations, zoning, etc., the client would be left up in the air. The extent to which this is true appears in the B. U. Law Review, Vol. 35, No. 3, which is entirely devoted to zoning in New England. Taxes and assessments of municipality, state and nation are readily ascertainable and certain. Not so, however, as to the status of land, in various cities and towns.

Many lawyers employ engineers to check the land as to area and the use to which the particular land may be put. The engineer furnishes a plot plan, certified by him as to compliance of the lot with laws then in force as to zoning, etc. This is an additional expense to the client, which many people cannot afford.

Under the Subdivision Control Act the cities and towns adopting the Act are required to file acceptance thereof with the Registry of Deeds, or Land Court; and also to file bylaws or regulations pertaining to the same. Curiously enough, the Registers of Deeds have simplified the procedure by asking anyone making a subdivision to file a plan showing approval, or waiver of objection to the same, before recording papers dividing land. This works well in practice and has helped lawyers, Registers of Deeds, and everybody else dealing with land.

We believe that if someone wishes to buy land, if the town or city shall be required to file (not record) in the Registry of Deeds, data showing the zoning requirements for all of the various parts of the town or city, the burden would be placed where it belongs, upon the people who know what the zoning laws are in their towns and cities; and the land owner and searcher could rely upon

what the file shows in the Registry (subject to a call to the Town Clerk as to any change).

Our system of records was begun early in the 17th century to enable people to examine and rely on it. H. 964 as stated in the petition and in the Mass. Law Quarterly for Dec. 1955 was to "preserve the recording system". The bill was printed on p. 22 of the Quarterly.

After considering the two bills and the discussion in and out of print of their practical operation we think H. 964 with the suggested suspension goes too far and would cause more trouble and confusion than it would cure. For this reason we do not recommend it. S. 272 which we understand was drawn by planning authorities to avoid the more drastic provisions of H. 964 would, in our opinion, do a great deal to relieve the situation.

We, therefore, recommend S. 272 with the addition of the word "maps" in appropriate places and omitting the filing with the recorder of the Land Court, so as to read as follows—

DRAFT ACT

Section 6 of chapter 40A of the General Laws is hereby amended by adding at the end the following three sentences:—After the adoption of a zoning ordinance, map or by-law or any amendment thereto the city or town clerk shall file without fee, but not be required to record, an attested copy thereof with the register of deeds of the district in which such city or town lies. Copies of all zoning ordinances, maps or by-laws in effect at the date of the passage of this act shall also be similarly filed by said clerk with said register. Such copies of zoning ordinances, maps or by-laws and amendments thereto shall be kept by the register with the notices and rules and regulations required to be filed under section eighty-one X of chapter forty-one.

HOUSE 2375 FOR A MOTION SESSION IN LOWELL

(Referred by Resolves Chapter 72)

This bill provides

"The superior court of Middlesex county shall hold a motion session in the city of Lowell twice each month for the hearing of motions on action on the Lowell jury trial list."

We do not recommend the bill.

The matter of arranging sessions of the court is an administrative function which is part of the responsibility of the Chief Justice under G. L. Chapter 212 Section 14 A.

HOUSE 1115—A REQUEST FOR A REPORT ON THE DISCLOSURE BEFORE TRIAL OF THE NAMES OF WITNESSES FOR THE COMMONWEALTH IN CRIMINAL CASES

We do not recommend any legislation on this matter.

It has been the law of this Commonwealth for more than a hundred years, that any indicted defendant, upon motion, was entitled to a list of the witnesses who appeared before the Grand Jury when the indictment against him was found. See Commonwealth v. Locke, 14 Pick. 485, 1833. In addition G. L. C. 277, S 9, provides that each foreman of a Grand Jury "shall under his hand return to the court a list of all witnesses sworn before the Grand Jury during the sitting, which shall be filed of record by the clerk." While a non-compliance with this section is no ground for quashing an indictment, Commonwealth v. Edwards, 70 Mass. (4 Gray) 1, the information may be secured by the motion mentioned above, if the foreman has failed to return the list of witnesses.

It is our conclusion that defendants indicted for felonies have sufficient protection under these procedures, and that a list of all the witnesses to be called at the trial need not be made available. In minor crimes where there is no indictment, we do not believe the problem is sufficiently serious to require legislation.

GIFTS OF SECURITIES TO MINORS H. 1998 AND H. 2388

(Referred by Resolves Chapter 47)

The subject matter of these two bills was referred to the Council and one or two revised provisions were submitted to the Council. As appears below acts substantially similar to the bills referred had been adopted in 13 States and by Congress for the District of Columbia. In August 1956 a "Uniform" Act was finally approved and recommended to the various States by the National Conference of Commissioners on Uniform State Laws. This proposed "uniform" act is recommended and likely to be adopted in an increasing number of jurisdictions. It is, therefore, an obvious part of the "subject matter" of the bills referred.

While we do not recommend either H. 1998 or H. 2388, we do submit the advisability of adopting in substance the "Uniform" act recommended by the Commissioners with certain minor additions which do not affect the substantial uniformity of the act or its convenient operation. The purpose of this legislation is to encourage small gifts to minors which, without such legislation will not be made, seems to us sound. As the purpose and history

of movement is best described in the introductory statement of the Conference of Commissioners we reprint it so that the background of the "Uniform" act may be understood.

The changes which we recommend for Massachusetts have been agreed to by the Petitioner for Senate bill No. 308 of 1957 recently introduced and pending. As that bill is printed for the legislature, we incorporate it by reference as the Draft Act which we recommend instead of increasing the expense of this report by duplicating it.

UNIFORM GIFTS TO MINORS ACT

Prefatory Note

1. *The Model "Act Concerning Gifts of Securities to Minors".*

In 1955 and 1956, thirteen states (Note 1) enacted counterparts of a model "Act Concerning Gifts of Securities to Minors" (Note 2), sponsored by the New York Stock Exchange and the Association of Stock Exchange Firms. In 1956, the Congress passed and the President signed a bill (Note 3) patterned on the Model Act and applicable to the District of Columbia.

The statutes enacted to date follow the Model Act in every material respect but incorporate some variations in detail: differing most extensively, but still adhering closely to the Model Act, is the New York act (Note 4). The Model Act, including state by state variations, appears in Commerce Clearing House, Inc. Stock Transfer Guide at pages 5201, 5205 and 5255 et seq.

The Model Act provides a simple, inexpensive method for making gifts of securities to minors, for accomplishing what could previously be done under a trust instrument.

A direct gift of a security to a minor involves serious practical difficulties, particularly upon the sale of the security during minority. The minor may disaffirm the sale: hence, brokers, issuers and transfer agents deal with the minor at their peril.

A formal guardianship provides no adequate substitute. The guardian may be liable for losses sustained if a "non-legal" security is retained. Generally, he cannot reinvest except in "legals". Generally, also, he is required to furnish a bond and to make frequent expensive formal accountings.

The net result is to discourage, if not prevent, small gifts of securities to minors.

Note 1. California, Colorado, Connecticut, Georgia, Michigan, New Jersey, New York, North Carolina, Ohio, Rhode Island, South Carolina, Virginia, Wisconsin.
Note 2. Herein referred to as the "Model Act".
Note 3. Public Law 976—84th Congress, Chapter 947—2nd Session (H. R. 11090; Senate Report No. 2663).
Note 4. New York Personal Property Law, Article 8-a, Sections 265-270.

Statutes or regulations eliminate these complications when the subject of the gift is a United States Savings Bond or, in many states, money deposited in a banking institution. The Model Act seeks a similar result when the subject of the gift is a security.

The theory underlying the Model Act is simple. A donor who gives a security to a minor in the manner prescribed by the Act thereby makes a gift which vests indefeasibly in the minor (and qualifies for the $3000/$6000 gift tax exclusion provided for in Internal Revenue Code Section 2503) and, in addition, subjects the gift to the prescribed administrative powers, rights, duties and immunities of the custodian named by the donor and third persons dealing with the custodian.

The Model Act is discussed in:

"Giving to Minors Made Easy", by Earl S. MacNeill (Vice President, Irving Trust Company), in the November, 1955 issue of The Trust Bulletin, published by the Trust Division, American Bankers Association;

"Uniform Gifts of Securities to Minors Act: A Consideration of its Merits", by Winsor C. Moore (Prof. of Law, Creighton Univ. School of Law), in The University of Detroit Law Journal, Vol. XXXIII, March, 1956, p. 298;

"Recent Legislation to Facilitate Gifts of Securities to Minors", a note in Harvard Law Review, Vol. 69, No. 8, June, 1956, p. 1476; and

A note in 54 Michigan Law Review, pp. 883-886 (1956).

It has also been the subject of an intensive study by the Legislative Research Center of the University of Michigan Law School.

2. *Uniform Gifts to Minors Act.*

The Uniform Act broadens the Model Act to permit gifts of money for investment under the "prudent man" rule prescribed in the Act.

To conform the title of the Act to its broadened scope, as well as to shorten it for more easy use, the title has been changed to "Uniform Gifts to Minors Act". Moreover, the Uniform Act offers to enacting states the choice of permitting the donor to select as the original custodian any adult person in whom he has confidence; banks and trust companies are also permitted to act both as original or successor custodians.

Because the Model Act has already been enacted in so many jurisdictions, deviations from it have been limited to changes to conform to the "Drafting Rules for Writing Uniform or Model Acts", to supply apparent deficiencies, to meet apparently well

founded objections and to conform terminology, wherever possible, to that of the Uniform Commercial Code (Note 5).

The Uniform Act meets with the approval of the New York Stock Exchange and the Association of Stock Exchange Firms.

3. *Tax Consequences.*

In a special ruling (Note 6) of the Director, Tax Rulings Division, Office of the Commissioner of Internal Revenue, dated January 6, 1956, it was held that the transfer by the donor of ..... shares of stock "to his minor daughter under the ..... registration" in the form prescribed by the Model Act as enacted in Colorado "was completed for Federal gift tax purposes on the date the shares were registered on the books of the corporation in the name of the donor as custodian for his minor daughter" and represented "a gift of a present interest in property within the meaning of section 2503(c) of the 1954 Code."

In Revenue Ruling 56-86 (Note 7), it was held that "a transfer of securities to a minor donee pursuant to the statute adopted by the State of Colorado constitutes a completed gift for Federal gift tax purposes at the time the transfer was made" and that "such gifts come within the purview of section 2503(c) of the Internal Revenue Code of 1954 and, therefore, quality for the annual gift tax exclusion authorized by section 2503(b) of the Code."

The considerations which led to the above Rulings are believed to be equally applicable to the Uniform Act.

The extent, if any, to which income, received by a custodian under the Act and applied by him to the support of the minor, will be included in the gross income of a person owing a legal obligation of support has not been finally determined. The Proposed Regulations (Note 8) under Internal Revenue Code of 1954, Sections 641-663 and 683, relating to the taxation of estates and trusts and beneficiaries, published in the Federal Register on May 2, 1956, provide:

> "Section 1.662 (a)-4. *Amounts used in discharge of a legal obligation.* Any amount which, pursuant to the terms of a will or trust instrument, may be used in full or partial discharge or satisfaction of a legal obligation of any person shall, to the extent so used, be included in the gross income of such person under Section 662(a) (1) or (2), whichever is applicable as though directly distributed to him as a beneficiary, except in cases to which section 215 or section 682 applies. The term "legal obligation" includes a legal obligation to support another person if, and only if, the obligation is not affected by the adequacy of the dependent's own resources. For example, a parent has a

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NOTE 5. Herein referred to as the "Code".
NOTE 6. CCH Fed. Est. & Gift Tax Rep., Par. 8066.
NOTE 7. I.R.B. 1956-11, p. 11; CCH Fed. Est. & Gift Tax Rep., Par. 8073.
NOTE 8. CCH Federal Income Tax Service, Par. 36,689 et seq. and, particularly, Par. 36,726.

"legal obligation" within the meaning of the preceding sentence to support his minor child if under local law property or income from property owned by the child cannot be used for his support so long as his parent is able to support him. On the other hand, if under local law a mother may use the resources of a child for the child's support in lieu of supporting him herself, no obligation of support exists within the meaning of this paragraph, whether or not income is actually used for support. Similarly, if under local law a child is obligated to support his parent only if the parent's earnings and resources are insufficient for the purpose, no obligation exists. In any event the amount of trust income which is included in the gross income of a person obligated to support a dependent is limited by the extent of his legal obligation under local law. Normally, in the case of a parent's obligation to support his child, the extent of the parent's legal obligation of support, including education, will be determined by the family's station in life and by the means of the parent without consideration of the trust income in question."

It cannot therefore be assumed that income from a gift under either the Model Act or the Uniform Act can be used for the minor's support or maintenance without the possibility of adverse tax consequences to the child's parents.

Other possible gift, income and estate tax consequences of a gift under the Model Act (and equally applicable to a gift under the Uniform Act) are discussed in the Harvard Law Review Note referred to above.

H. 1131 RELATIVE TO MORTGAGES FOR THE BENEFIT OF CREDITORS

(Referred by Resolves Chapter 43)

This bill (H. 1131) purports to strike out a whole section of existing law and "insert" a new section. It simply re-enacts the existing section with the two words "or mortgages" inserted as indicated below in *italics* in the fifth line. The bill reads

Chapter 203 of the General Laws is hereby amended by striking out section 41, as most recently amended by section 40 of chapter 550 of the acts of 1948, and inserting in place thereof the following:—

Section 41. The preceding section shall not apply to the acts of such trustee unless the assignment conveys *or mortgages* all the property and estate of the debtor wherever situated, either within or without the commonwealth, not exempt from attachment by the laws thereof, and provides for its distribution in substantial conformity with chapter two hundred and sixteen; nor unless a majority in number and value of the creditors, whose claims are neither secured nor preferred by said chapter, have assented in writing to the assignment; nor unless the trustee, before proceeding to act and immediately

on the acceptance of his trust, gives written notice by mail or otherwise to all known creditors of the debtor of such assignment and his acceptance thereof, and deposits with the clerk of the city or town where the principal business of the debtor is carried on a copy of such assignment, which shall be filed and indexed by said clerk upon receiving the fee provided by clause (1) of section thirty-four of chapter two hundred and sixty-two.

We do not recommend the bill.

As appears on the printed bill it was introduced on behalf of the Massachusetts Collectors and Treasurers Association. The reason was stated in a letter submitted to us by the draftsman of the bill. He said,

"it was prompted by the fact that persons who, strictly speaking, are mortgagees for the benefit of creditors rather than assignees for the benefit of creditors refuse to recognize a tax collector's right under *Collector of Taxes* of *Lowell* v. *Slafsky*, 332 Mass. 700, which, following *Boston* v. *Turner*, 201 Mass. 190, held that, where there is an assignment for the benefit of creditors, taxes are to be paid as a preferred claim. Since by a foreclosure of a mortgage for the benefit of creditors, collection of taxes can be defeated equally as much as by an original assignment in fee, no reason appears why the governing statute should not be amended to embrace mortgages and thereby protect against taxes being rendered uncollectible by a mortgage for the benefit of creditors."

On the other hand, the bill is opposed by a practitioner, with many years of experience with such mortgages, who has stated his reasons in a letter as follows:—

"House No. 1131 Should Not Be Recommended

(See note at end of this discussion.)*

"By the various court decisions referred to in the Articles mentioned, it has been held that a trust mortgage is *not* an assignment for the benefit of creditors—at least in this area.

"If the proposed legislation is enacted, every trust mortgage in the future would in fact become (by virtue of this particular act) nothing more or less than an assignment for the benefit of the creditors. It would thus destroy the numerous and very important advantages of a trust mortgage (as now operated) to an honest debtor carrying on a business, his creditors, and the general public.

"One of the principal advantages of the trust mortgage is that it permits an honest debtor, with the consent of his creditors, to carry on his business and to have ample time to pay off his indebtedness. At the same time it protects those creditors to the extent of the value of the property which is placed under the mortgage. It likewise avoids the stigma and excessive expenses connected with any bankruptcy action, even though aimed to accomplish the same result.

"Under an assignment for the benefit of creditors, no permission may be granted to carry on the business, even by the assignees. It is mandatory

that such business be liquidated and distribution made with reasonable promptness. (F. H. Roberts Co. v. Hopkins, Inc., 296 Mass. 519) . . .

"The great majority of trust mortgages have to do only with personal property. It is not uncommon, however, to have such trust mortgages cover real estate *and* personal property. Any change in the protection provided by the recording statutes—especially with respect to real estate—would be unwise legislation.

"The cases in which the question might arise as to whether the Commonwealth should receive priority over a creditor who had a duly recorded prior lien—in the nature of a trust mortgage—are extremely rare. To enact "messy" legislation and upset the law and destroy practices which have worked well for many years, in an effort to provide a further priority in such rare instances, would indeed be the height of folly.

"If the taxing authorities feel that these rare instances warrant additional legislation, then a *new provision* to provide priority for taxes over trust mortgages would seem to be the sensible type of bill to prepare."

The same opponent states orally that out of about 125 mortgages in the past 25 years only 5 or 6 have failed to accomplish their object of enabling the mortgagor to pay his debts and keep his business, also that foreclosures are rare.

The facts and reasons thus stated far outweigh, in our opinion, any occasional, and apparently rare, difficulties for the taxing authorities and in connection with the last sentence in the letter quoted, we see no sufficient reason for legislation.

Under Sections 11-14 of Chapter 59 of the General Laws, the existence of such a trust mortgage does not defeat a properly assessed local tax any more than any other mortgage does. The tax on mortgaged property is collectible.

Throughout the country in these difficult times we hear of the struggles of "small business men." The fact that under Massachusetts law a trust mortgage gives an honest man who happens to get into temporary financial difficulties a chance to keep his business, pay his debts and get on his feet again seems to us a Massachusetts virtue as compared with a law which would force him into bankruptcy or liquidation under an assignment.*

*These mortgages are discussed at length in an article by Mr. Carl B. Everberg in 1950 (55 Commercial Law Journal 82 and most recently by Mr. B. L. Williams in the "Bar Bulletin" for June 1956. This latter article deals with the recent decision of the Court of Appeals for the First Circuit in U. S. v. Gargill 218 Fed. 2nd 556 (1955) sustaining a Massachusetts trust mortgage, and cites the Massachusetts and Federal cases on the subject.

HOUSE 2197, TO INCREASE THE NUMBER OF PEREMPTORY CHALLENGES OF JURORS IN CIVIL AND CRIMINAL CASES

(Referred by Resolves Chapter 26)

We do not recommend this bill.

The present Statute (Section 29 of the Chapter 234 of the General Laws) provides

> "SECTION 29. Peremptory Challenges.
> Upon the trial of an indictment for a crime punishable by death or imprisonment for life, each defendant shall be entitled to twelve peremptory challenges of the jurors called to try the case, and in other criminal cases each defendant shall be entitled to three such challenges; provided, that each defendant in a capital case in which additional jurors are chosen under section twenty-six B shall be entitled to one additional peremptory challenge for each additional juror. In every criminal case the commonwealth shall be entitled to as many such challenges as equal the whole number to which all the defendants in the case are entitled. In a civil case each party shall be entitled to three such challenges. Peremptory challenges shall be made before the commencement of the trial and may be made after the determination that a person called to serve as a juror stands indifferent in the case."

H. 2197 would strike out Section 29 and substitute another section 29 reading exactly the same except that the number of peremptory challenges in criminal cases, other than capital or life imprisonment cases, *and in civil cases* is changed from three to six.

Less than two years ago, by St. 1955, chapter 485, § 1, which took effect on October 1, 1955, the number of peremptory challenges in all these cases was raised from two to three. We see no necessity or reason for a further increase in the number to six.

Any juror may be challenged for cause now if the court is satisfied that sufficient cause exists. But a peremptory challenge is a challenge without showing cause either because a cause cannot be shown or simply because the lawyer who makes the challenge thinks, or guesses, that he wants to keep the particular person off the jury.

The subject of jury selection has been under discussion throughout the country for years in both State and Federal Courts. The best system of more careful selection that we know of is that in Cleveland, Ohio, and, for some years past, the Council has recommended a draft act for jury commissioners as an experiment in a district comprising the counties of Middlesex, Suffolk and Norfolk. About 20 years ago, after the jury-fixing scandals here, the Court adopted the jury pool in Suffolk County which made that kind of knavery by *some* lawyers less easy. In 1955 by Chapter 38 the

legislature required more detailed reports by the jury selecting bodies on jurors whom they placed on the list. The system is still not as good as it might be. A jury under our constitution is supposed to be composed of reasonably intelligent fair minded men and women of good character and as a general rule we believe they are but, of course, no system is perfect in its operation.

Taking our system as it is, there is a serious aspect to the proposal for more peremptory challenges without specified cause, which seems to be commonly overlooked. A few years ago Judge Frank of the Federal Court of Appeals in the Second Circuit in New York, published a book "The Courts on Trial." In his Chapter on "The Jury System" he says

> "Do the lawyers strive to pick impartial jurors? Do they want jury-men whose training will best enable them to understand the facts of the case? If you think they usually do, watch the trial lawyers at work in a court-room. Or read the books written for trial lawyers by seasoned trial lawyers.
>
> "Here are a few excerpts from such a book, Goldstein's Trial Techniques, a book commended for its accuracy by Professor Morgan of Harvard. Always demand a jury, says Goldstein, if you represent a plaintiff who is a 'woman, child, an old man or an old woman, or an ignorant, illiterate or foreign-born person unable to read or write or speak English who would naturally excite the jury's sympathies, especially if the defendant is a large corporation, a prominent or wealthy person, an insurance company, railroad or bank.' Then, he advises, seek the type of juror who 'will most naturally respond to an emotional appeal.' Make every effort, this author counsels, to exclude from the jury anyone 'who is particularly experienced in the field of endeavor which is the basis of the law suit.' As such a person is likely, says Goldstein, to have too much influence with the other jurors, it is always better to submit the issues 'to a jury who have no knowledge of the particular subject.'
>
> "In that book much is made of the fact that 'the jury tries the lawyers rather than the clients,' that, 'without realizing it, the jurors allow their opinions of the evidence to be swayed in favor of the side represented by the lawyer they like.' Harris, in his well-known book on 'advocacy', says, 'It may be that judgment is more easily deceived when the passions are aroused, but if so, you (the lawyers) are not responsible. Human nature was, I presume, intended to be what it is, and when it gets into the jury-box, it is the duty of the advocate to make the best use of it he fairly can in the interests of his client.' The Supreme Court [of one state] has solemnly decided that 'tears have always been considered legitimate arguments before a jury,' that such use of tears is 'one of the natural rights of counsel which no court or constitution could take away,' and that 'indeed, if counsel has them at command, it may be seriously questioned whether it is not his professional duty to shed them whenever proper occasion arises. . . .'"

We do not quote these passages as peculiarly representative of the lawyers and juries of Massachusetts. On the contrary we believe our lawyers and jurors in general are as fair as they are

anywhere in the country; but the quotations state boldly as advice given to lawyers, what has been the subject of stories and frequently "jokes" throughout the country for generations. That raised the question whether they represent the kind of approach to jury trial at the public's expense contemplated by the Constitution and whether such strategy, advised by some legal writers for lawyers in general, should be encouraged by doubling the number of peremptory challenges without specified cause. It is a very human problem and obviously peremptory challenges without specified cause provide more temptation to some lawyers. As Judge Frank says

> "This is no laughing matter. For prejudice has been called the thirteenth juror, and it has been said that 'Mr. Prejudice and Miss Sympathy are the names of witnesses whose testimony is never recorded, but must nevertheless be reckoned with in trials by jury.'"

It seems obvious, especially in civil cases, that the more peremptory challenges, the greater the opportunity offered to try for a prejudiced jury.

We are not questioning the constitutional right to a fair jury trial under reasonable constitutional regulations but we do not think the opportunity should be enlarged by the proposed bill for lawyers to try for a prejudiced jury in the name of justice.

Another practical but important objection from the point of view of the tax-payers through the county treasurer is the increased number of jurors at $10.00 per day and travel needed to supply additional jurors to take the place of those challenged at the expense of the counties. As pointed out in one of our earlier reports, the annual cost to the Counties of jurors alone was over a million dollars when the jurors daily cost was $8.00 and travel.

The following appeared in "The Panel" for June 1956, of the Grand Jury Association of New York, Vol. 25 No. 2.

> "New York City, at long last, seems to be waking up to its jury problem.
>
> "The press and other public forums are full of suggestions by jurists and civic leaders for improving jury service. Citizen interest seems to be stirring.
>
> "There appears to be a growing realization of the truth expressed again recently by a State Supreme Court Justice who is a long-time student of jury problems. 'The quality of justice,' declared James B. McNally, 'is no higher than the caliber of the men and women who serve on juries.'
>
> "The implications are clear; if jury quarters are crowded and dirty, *if jurors have to sit around waiting to be called only to be peremptorily challenged*

and sent away, there results a huge increase in the number of otherwise public minded citizens who shun jury duty. (Italics supplied.)

"Justice McNally's remark about the 'quality of justice' was made on a radio forum during which he put the finger on one of the prime causes of juror discontent—the long waits ending in the frustrating dismissal mentioned above. He indorsed a recommendation by the Grand Jury Association of New York County that examination of jurors on the voir dire be conducted by counsel acting through the court—rather than directly by counsel, as at present. The Association advanced this proposal after interviewing jurors and discovering that their most common complaint could be summed up: 'It's futile. They call you for jury service. Then, you sit around wasting time for days waiting to be called on a case. Finally, you are called and some lawyer challenges you and out you go.'

"*Justice McNally, appearing on WMCA's Report to the People,* said in approving the Association's recommendation that he agreed with the opinion "that some lawyers do not like to have intelligent jurors. I think sometimes where counsel has a bad case he would like very mediocre jurors to try his case because he might be able to mislead them a little more easily."

EXCESSIVE PEREMPTORY CHALLENGES

The sixteen days spent in the recent Brinks case to pick jurors, and the 1400 jurors called up for examination, have pointed up a far more serious problem in criminal cases under G.L. Chapter 234 § 29. Eight defendants, indicted in thirteen indictments consolidated for trial, were allowed a total of 262 peremptory challenges, and a like number was allowed to the Commonwealth. On the first indictment, for an offense punishable by life imprisonment, the eight defendants were entitled to 96 peremptory challenges, with 16 additional challenges for the two additional jurors. This made a total of 112 peremptory challenges to which the eight defendants were entitled under the first indictment.

The defendants were, however, allowed an additional 150 peremptory challenges because they were also being tried on 12 other indictments consolidated with the first indictment for trial. There is no sense whatever in this pyramiding of peremptory challenges. It should not take any more peremptory challenges to insure a fair trial on one indictment carrying life imprisonment, than on such an indictment consolidated for trial with additional indictments carrying lesser penalties or involving only some of the defendants.

In order to cure this needless multiplication of peremptory challenges where more than one indictment in a criminal case is being tried, we recommend the following:

DRAFT ACT

AN ACT TO PREVENT EXCESSIVE PEREMPTORY CHALLENGES IN CRIMINAL CASES

Section 29 of chapter 234 of the General Laws, as most recently amended by section 1 of chapter 485 of the Acts of 1955, is hereby further amended by adding at the end of the first sentence thereof the following words:

, "and provided further, that each defendant in a case in which several indictments are consolidated for trial shall be entitled to no more peremptory challenges than the greatest number to which he would have been entitled upon trial of any one of said indictments alone."

HOUSE 376, 819, 1110, 1114 AND 1336, RELATIVE TO PROVISION OF COUNSEL FOR INDIGENT CRIMINAL DEFENDANTS

(Referred by Resolves Chapter 63)

Three of these bills provide for establishing offices of Public Defenders to act as counsel for persons accused of crime who are unable to employ counsel. We do not recommend any of them.

House 376 reads:

"AN ACT TO ESTABLISH THE OFFICE OF PUBLIC DEFENDER.

"SECTION 1. In each county of the state containing 35,000 or more inhabitants there is created the office of public defender and the person to be appointed to such office shall be known as the public defender. No person shall be eligible to hold such office unless he is duly licensed as an attorney and counsellor at law in this state.

"SECTION 2. As soon as possible after this act goes into effect the chief justice of the superior court shall appoint to the office of public defender a properly qualified person who shall hold office, his death or resignation not intervening, at the pleasure of the chief justice, and whenever a vacancy occurs in the office it shall be filled in like manner, and the person appointed to fill such vacancy shall have the like tenure of office.

"SECTION 3. The person appointed as public defender, before entering upon the duties of his office, shall take and subscribe an oath of office before one of the justices of the superior court, which oath shall be filed in the office of the clerk of the superior court for the county where the said public defender shall have jurisdiction.

"SECTION 4. The public defender, as directed by the court, shall act as attorney and counsellor at law, without fee, before any court of record exercising a general criminal jurisdiction within the county for all persons who are held in custody or who are charged with the commission of any criminal offence and who the court finds unable to employ counsel; provided, however, the court may, with the consent of the defendant, appoint other

counsel; and provided, further, such counsel shall serve without compensation, except in capital cases; in such cases he shall be compensated as is provided by law. He shall also, in the case of the conviction of any such person, prosecute any writ of error or other proceedings in review which in his judgment the interests of justice require.

"SECTION 5. The public defender shall be paid out of the county treasury as such compensation for his services a salary in such amount as shall be fixed by the chief justice of the superior court.

"SECTION 6. The public defender shall have the power to appoint such number of assistants, all duly licensed practitioners, for the proper discharge of the duties of the office, who shall serve at the pleasure of the public defender. He shall also appoint such number of clerks and other employees as may be necessary for the proper transaction of the office. The number and compensation of such clerks and employees shall be approved by the chief justice of the superior court and paid out of the county treasury.

"SECTION 7. The public defender shall keep a record of the services rendered by him and file it in the office of the clerk of the superior court in the county where the said services are rendered."

House 819 provides for one Public Defender in each county, to be appointed annually by the Superior Court and paid by the Commonwealth at the rate approved by the Court, to defend "any person charged with crime in any court in the county . . . when such person shall be without funds sufficient to employ counsel."

House 1336 provides for one Public Defender for the Commonwealth, appointed by the justices of the Supreme Judicial Court at a salary of $13,000, with a deputy public defender in each of the 7 Districts and a total of 19 assistants and 7 investigators, at salaries ranging from $4,000 to $8,800, to defend "any person who is not financially able to employ counsel, and who is charged in the superior court with any felony or with any misdemeanor carrying a sentence of more than one year" at all stages of the proceedings, including preliminary examination.

The experience with Public Defenders in states where they have been established is varied, and not at all uniformly successful. In some, complaint is made of the quality of the legal services offered; in others it is the excessive cost which has been criticized; and in most there is some reason to believe that the hand of politics has reached into the Public Defender's functioning. There are many thoughtful judges and lawyers who agree with Judge Edward J. Dimock in his article "The Public Defender: A Step Towards a Police State?", that "the adoption of the public defender system would bring our government so close to the police state that we ought to shun it like the plague. . . . A public defender who owes his position to the judge or judges before whom he practices cannot have an eye single to the interests of the accused. The

human instinct of self-preservation is so strong that he will consider his every move in the light of his relations with the judge or judges. If the office is elective, he will consider his every move in the light of his relations with the electorate." (42 A.B.A. Journal 219 at 221, March 1956.) For these reasons, we do not recommend adoption of the Public Defender system in Massachusetts.

The other two bills referred, House 1110 and 1114, broaden existing provisions for compensation of assigned counsel. The history of the law on this subject in Massachusetts is summarized in our 27th report (pp. 26-29 in 1951). Our courts have power to appoint counsel to serve as officers of the court without compensation, whenever that course seems required in the interest of fairness.

The law of Massachusetts has long required the assignment of counsel in all capital cases. The Fourteenth Amendment to the Constitution of the United States, as summarized in 1949 in Allen v. Com., 324 Mass. 558 at 562, further "requires assignment of counsel in non-capital cases only when the defendant, by reason of youth, inexperience, or incapacity of some kind, or by reason of some unfair conduct by the public authorities, or of complication of issues, or of some special prejudice or disadvantage, stands in need of counsel in order to secure the fundamentals of a fair trial."

But compensation for services and expenses of assigned counsel is authorized only in murder cases, and by Superior Court Rule 95, the allowance of compensation for services is limited to capital cases. The existing statute law on assignment and compensation of counsel in the General Laws is as follows:

CHAPTER 276

"§37A. *Assignment of Counsel.* If a person is brought before a district court or trial justice for examination upon charge of a capital crime and does not waive examination, the superior court may assign counsel upon his petition and upon certification of the charge to the superior court by the clerk of the district court or by the trial justice. The examination shall thereupon be continued until the assignment of counsel has been made, and certification thereof received by the clerk of the district court or by the trial justice, or until the petition for assignment of counsel has been otherwise disposed of. The superior court may allow reasonable compensation for the services at the examination in the district court, or before the trial justice, of counsel assigned to appear for the accused, if he is otherwise unable to procure counsel, and such compensation shall be paid by the county where the crime was alleged to have been committed."

CHAPTER 277

"§47. *Arraignment.* If a prisoner, under indictment for *a capital crime*, pleads guilty, upon being arraigned, the court shall award sentence against him; if he does not plead guilty, the court may assign him counsel and take

all other measures preparatory to a trial, which shall, subject to section seventy-two, be held as soon after the finding of the indictment as the other official duties of the justices will admit and the circumstances of the case require.

"§55. *Compensation of Counsel of Prisoner.* A justice of the court, sitting at the trial or other proceedings upon an indictment for *murder,* may allow reasonable compensation for the services of counsel assigned to defend the prisoner if he is otherwise unable to procure counsel, and such compensation shall be paid by the county where the indictment is found.

"§56. *Expenses of Counsel of Prisoner.* The reasonable expenses incurred and paid by counsel assigned by the court for the defence of a person indicted for *murder,* who is otherwise unable to procure counsel, shall be paid by the county where the indictment is found after approval by a justice sitting at the trial or other proceedings of the case."

House 1110 would amend Sections 47, 55 and 56 of Chapter 277 above by substituting the words "a felony crime" for the references to capital crimes and to murder. House 1114 would make the same change in Sections 55 and 56, but does not affect Section 47.

We believe the present provisions for payment of compensation and expenses of assigned counsel should be expanded. Judge Dimock in the article cited above recognizes that except in New Jersey the system of *unpaid* specially assigned counsel has never worked well in metropolitan communities. He says (p. 219): "My own view is that we can still maintain a free and independent Bar without relying upon the old system of unpaid specially assigned counsel in its original form or modernized as it has been in New Jersey. The advantages of the public defender system unaccompanied by its dangers can be obtained by making public funds available to specially assigned counsel or, better still, by privately supporting a legal aid society or voluntary defenders' organization."

In our 27th report (p. 28 of 1951) we stated our belief that the Superior Court should be further authorized to allow reasonable compensation for services and expenses "in serious cases, other than capital, when the court finds that the defendant should be represented by counsel and if he so desires but because of lack of funds or otherwise, cannot procure counsel, if competent counsel is unwilling to accept assignment." We recommended a draft act to this effect, which also permitted the Superior Court to make rules for the administration of the system.

We renew this recommendation, with a drafting change to provide that the Superior Court *shall* assign counsel whenever "the defendant is required by law, in the opinion of the court, to be represented by counsel," and that it *may* assign counsel in any other criminal proceeding. In either case, the draft act provides

that the Superior Court *may* "in the exercise of judicial discretion if it is found necessary, allow reasonable compensation for such services or necessary expenses or both."

We accordingly recommend the following:

DRAFT ACT

AN ACT PROVIDING FOT THE APPOINTMENT AND COMPENSATION OF COUNSEL IN CRIMINAL CASES.

SECTION 1. Chapter 277 of the General Laws is hereby amended by inserting after Section 47 the following new section.

SECTION 47A. At any stage, whether in a district court or in the superior court, of a criminal proceeding other than capital and not within the final jurisdiction of a district court, in which the defendant is required by law, in the opinion of the court, to be represented by counsel, the superior court shall, and at any such stage of any criminal proceeding the superior court may, under the circumstances and in the manner provided for capital cases by section 37A of chapter 276 and section 47 of chapter 277, assign competent counsel if the defendant desires counsel and is unable to procure counsel because of inability to pay for the services or otherwise, and may in the exercise of judicial discretion if it is found necessary, allow reasonable compensation for such services or necessary expenses or both. Such compensation and expenses if approved and certified by the chief justice of the superior court shall be paid by the county within which the court sits as provided for capital cases in section 37A of chapter 276 and sections 55 and 56 of chapter 277. The superior court may make rules for the administration of this section.

HOUSE NO. 2189, SERVICE ON FOREIGN CORPORATIONS

This bill contains three Sections as follows:

SECTION 1. Section 3 of chapter 181 of the General Laws is hereby amended by striking out the same and substituting in its place the following section:—

SECTION 3. *Commissioner to be appointed Attorney for Service of Process.* —Every foreign corporation, which does business in this commonwealth or which has a usual place of business in this commonwealth, or owns real property therein without having such a usual place of business, or which is engaged therein, permanently or temporarily, and with or without a usual place of business therein, in the construction, erection, alteration or repair of a building, bridge, railroad, railway or structure of any kind, or in the construction or repair of roads, highways or waterways, or in any other activity requiring the performance of labor, *or is engaged in the carriage or shipment of freight, cargo or passengers, whether by rail, vessel, aircraft, or any other means of carriage or shipment, to include all forms of delivery,*

pick-up and transporting, shall, before doing business in this commonwealth, in writing appoint the commissioner and his successor in office to be its true and lawful attorney upon whom all lawful processes in any action or proceeding against it may be served, and in such writing shall agree that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served on the corporation, and that the authority shall continue in force so long as any liability remains outstanding against the corporation in this commonwealth. The power of attorney and a copy of the vote authorizing its execution, duly certified and authenticated, shall be filed in the office of the commissioner, and copies certified by him shall be sufficient evidence thereof. Service of such process shall be made by leaving a copy of the process in duplicate with a fee of two dollars in the hands of the commissioner, of an associate commissioner, or in the office of the commissioner, and such service shall be sufficient service upon the corporation.

SECTION 2. Section 3A of chapter 181 of the General Laws is hereby amended by striking out the same and substituting in its place the following section:—

SECTION 3A. *Certain Foreign Corporations Failing to Register, to be deemed to have appointed Commissioner Attorney for Service of Process.*— Any such corporation *referred to in section three which does not comply with the provisions of said section*, including a corporation as to which the commissioner is required by section six to refuse appointment as attorney for service, shall, without affecting any penalty, liability or disability imposed by section five, be deemed and held, in relation to any cause of action or proceeding arising out of such business, to have appointed the commissioner and his successor in office to be its true and lawful attorney, and any process in any such action or proceeding against it served upon the commissioner or his successor in office shall be of the same legal force and validity as if served on such corporation.

SECTION 3. Chapter 181 of the General Laws is hereby further amended by adding after section 3A as amended, the following section:—

SECTION 3B. Any foreign corporation which, having no office or place of business in this state, directly or indirectly, sells to, or solicits orders to sell, any products or services to any person, firm or corporation in this state, whether such sale or solicitation to sell be a single incident or a series of incidents, or whether such sale or solicitation to sell be of a single or occasional or recurrent character, shall be deemed and held, in relation to any cause of action or proceeding arising out of such business so transacted in this commonwealth, to have appointed the commissioner and his successor in office to be its true and lawful attorney, and any process in any such action or proceeding against it served upon the commissioner or his successor in office shall be of the same legal force and validity as if served on such corporation.

We do not recommend passage of Sections 1 and 2 of the bill. We do, however, recommend adoption of Section 3.

The new material added in Section 1 is italicized above, and a drafting change has been made in the last sentence above, to take

account of an amendment to Section 1 by Acts 1955, c.611 § 6. In Section 2, the words italicized broaden the definition in the present law of "any such corporation *which does business in this commonwealth without complying with the provisions of section 3* [of G.L. chapter 181], including a corporation ***." Section 3 of the bill is new.

Section 3 of the bill would add a new Section 3B to G.L. chapter 181. The suggested provisions are typical of a spreading movement among the various states. We think it desirable to extend jurisdiction of the courts in Massachusetts to cover such *causes of action arising out of business transacted in the Commonwealth,* as defined in the broad language of the proposed new section 3B. This kind of cause of action is defined to include selling "products or services to any person, firm or corporation in this State." It is in these cases that there exists a legitimate reason for giving jurisdiction over a foreign corporation to Massachusetts courts. The residents of this Commonwealth ought to be able to sue on causes of action arising out of business transacted here, because Massachusetts parties and Massachusetts witnesses are usually involved.

But we believe the Commonwealth should not attempt unduly to extend the jurisdiction of its courts to cover causes of action not arising out of business transacted in the Commonwealth. The proposed amendments in Sections 1 and 2 of the bill are not necessary in order to cover foreign corporations which actually "do business" here, or which have more broadly defined activities actually being performed in the Commonwealth. We believe the definitions in the present law go as far as is needed in bringing within the jurisdiction of our courts, for all purposes, foreign corporations which have some considerable connection with the Commonwealth.

With our courts already congested with cases now within their jurisdiction, we do not believe it advisable to go "shopping" for causes of action arising out of business transactions outside the Commonwealth as is proposed in the amendments contained in Sections 1 and 2 of the bill referred to us.

A majority of the Council (two members dissenting) for the reasons stated above, recommended the following draft act (largely taken from Section 3 of the House 2189).

DRAFT ACT

AN ACT TO PROVIDE FOR SERVICE ON FOREIGN CORPORATIONS IN PROCEEDINGS ARISING OUT OF BUSINESS TRANSACTED WITHIN THE COMMONWEALTH

Chapter 181 of the general laws [as amended] is hereby further amended by adding after section 3A as amended, the following section:—

SECTION 3B. Any foreign corporation which, having no office or place of business in this commonwealth, sells, or solicits orders to sell, any products or services to any person, firm or corporation in this state, whether such sale or solicitation to sell be a single incident or of an occasional or recurrent character, shall be deemed and held, in relation to any cause of action or proceeding arising out of such business so transacted in this commonwealth, to have appointed the commissioner and his successor in office to be its true and lawful attorney, and any process in any such action or proceeding against it served upon the commissioner or his successor in office shall be of the same legal force and validity as if served on such corporation.

Mr. Muldoon and Chief Justice Adlow dissent from this recommendation.

MINORITY REPORT ON H. 2189

We think this amendment would lead to a serious increase in doubtful litigation.

FREDERIC J. MULDOON
ELIJAH ADLOW

COMPUTATION OF INTEREST UNDER THE DEATH STATUTES

In Frazier vs. Bigelow Carpet Company (1886) 141 Mass. 126, which was an action for the negligent destruction of property, the Court held that the jury, in ascertaining the damages, could consider the time in which the plaintiff had been kept out of the sum that would have made him whole at the time of the injury so long as that sum no longer indemnified him for his loss and might take interest on the original damage as a measure of the damage caused by the delay.

In Corcoran vs. City of Boston (1912) 211 Mass. 171, which was an action of tort for personal injuries, the Court said at page 173, that it had not been the practice in this Commonwealth to extend the rule of Frazier vs. Bigelow Carpet Company to personal injury cases.

The General Court enacted Chapter 212 of the Acts of 1946 which provided that in any action of tort in which a verdict is rendered or a finding made for pecuniary damages for personal injuries to the plaintiff or for consequential damages, or for damage to property, interest should be added to the amount of damages from the date of the writ.

By Chapter 244 of the Acts of 1951, Chapter 212 of the Acts of 1946 was amended to provide that interest should be added by the Clerk of Court to the amount of the verdict or of a finding.

By Chapter 641 of the Acts of 1956, Section 37 of Chapter 79 of the General Laws (Eminent Domain statute) was amended to provide that interest should be computed in a jury case by the Court and added to the jury's verdict. Prior to this act, the interest constituted a part of the verdict.

This leaves the Death Statute, Chapter 229 of the General Laws, as the only statute which provides for the addition of interest by the jury (Chap. 229, Sec. 11).

The original statute providing for interest in an action for damages for death (Statute of 1913, Chap. 290, Sec. 1) provided that where a plaintiff has a verdict in an action of damages for death, "there shall be added to the amount of the verdict interest thereon from the date of the writ."

It was said in Nugent vs. Boston Consolidated Gas Company, 238 Mass. 221, that the proper procedure was that, "A verdict is first to be returned and recorded, and interest thereon is to be added by the clerk from the date of the writ to the date of the verdict, and this amount bears interest to the date of entering the judgment upon which execution issues."

The phrasing of this statute as appearing in General Laws Chapter 229, Section 11, substituted for the words above quoted, the following: "There shall be added to the amount of the damages interest thereon from the date of the writ."

It was held in Fidelity Casualty Company vs. Huse & Carlton, Inc. (1930), 272 Mass. 448, that the item of interest as damages was to be included in the verdict in accordance with the statute in force at the time of the trial, and that this item was not to be added by the clerk to the damages found by the jury as was the practice in effect at the time of death.

The Court went on to state that, "The revision (of the statute [1913], Chapter 290, Section 1, by G.L. Chapter 229, Section 11), abolished the anomaly of a verdict returned by the jury but not expressing the entire damages, and the addition of interest to such verdict by some court officer, and placed upon the jury their true function to find the entire damages and to express them by their verdict."

Whether or not it was an anomaly to have the jury return a verdict and have the clerk add interest to that verdict, the present procedure certainly must be confusing to a jury.

Since 1911, by Chapter 31 of the Acts of that year, damages may be recovered in separate counts for conscious suffering and death, and under one count we have the interest added to the verdict by the clerk, and under the death count the interest is figured by the jury and made part of the verdict.

In the interest of consistency and uniformity, we recommend that Section 11 of Chapter 229 be amended to conform to the practice established by the original Act allowing interest in death actions.

DRAFT ACT

In any civil action in which a verdict is given or a finding made for pecuniary damages for the death, with or without conscious suffering, of any person, whether or not such person was in the employment of the defendant against whom the verdict is rendered or finding made, there shall be added to the amount of the verdict or finding interest thereon from the date of the writ.

SENATE 243, TO EXTEND THE STATUTE OF LIMITATIONS IN CERTAIN DEATH CASES

(Referred by Resolves, Chapter 49)

We do not recommend this bill, which provides:

The first paragraph of section 4 of chapter 260 of the General Laws, as most recently amended by section 9 of chapter 385 of the acts of 1937, is hereby further amended by adding after the word "accrues", in line 27, the words: —; provided, however, that if an action of tort for bodily injuries required under this section to be commenced only within one year next after the cause of action has been seasonably brought, and if the plaintiff thereafter dies as a result of said injuries, his executor or administrator may at any time prior to the trial of such action amend the declaration by adding a count for such death, notwithstanding any contrary provision of law.

Under the present law, actions for wrongful death created by G. L. Chapter 229 §§2A and 2C must be brought "within two years after the injury which caused the death." This corresponds closely to the provisions of G.L. Chapter 260 §§2A and 4 requiring actions of tort for bodily injury not resulting in death to be brought "within two years next after the cause of action accrues"—i.e., also after the injury. There is a legal difference; the two year provision in case of death is not subject to waiver or estoppel by the defendant, Melnik v. Perwak, 295 Mass. 512. Then G.L. Chapter 260 §4 imposes the additional requirement in motor vehicle and aircraft cases that actions for death and bodily injury must both be

brought "within one year next after the cause of action accrues," unless the defendant or the insurer has been notified within the year by registered mail, or unless it is a "hit and run" case governed by §4B.

The adoption of Senate 243 would substantially do away with any limit *on the length of time after injury* within which a motor vehicle death must occur. For once a bodily injury suit was started within a year from the date of injury, the subsequent death of the plaintiff at any time prior to trial would permit adding a count for wrongful death.

We believe the policy reasons limiting the bringing of tort suits for personal injury, to two years after the injury, apply with equal force to death actions. The question of causation of death becomes more and more difficult to determine as the time is lengthened. The extension of time to sue in G.L. Chapter 260 §10 where the "person entitled to bring" any action for bodily injury has died, does not extend this two year period in wrongful death actions, since the victim in such an action never was "entitled to bring" the action within the meaning of the statute during his own lifetime.

Consolidation of Death Statutes

We again renew our recommendation for consolidation and simplification of the death statutes, for the reasons stated in our 31st report (pp. 26-30 in 1955). Our recommended draft act would make very little change in the existing law. It is recommended to correct anomalies which for historical reasons have crept into the statutes with regard to limits of liability, contributory negligence as a defense to wilful, wanton or reckless acts, and limitation periods. It would cover in one section the general liability for wrongful death of private individuals and corporations. Some types of municipal liability would also be governed by it (including that for death of a person in the exercise of due care caused by a gas or electric plant owned or operated by a Town under G.L. Chapter 164 §64); liability of a county, city or town for defective ways and railings would, however, continue to be controlled by G.L. Chapter 229 §1.

The Committee on the Judiciary favorably reported our 1955 draft act (with minor changes) as House 2824. After passage in the House with an amendment extending the Statute of Limitations in two respects, the Senate voted to recommit it to Committee. The bill died when the House refused to concur in the recommittal.

One effect of the House amendment was to abolish the requirement now in our death statutes that the death must occur within 2 years from the injury which caused it. We do not recommend this part of the amendment, for the reasons stated in our discussion above of Senate 243. We firmly believe it is of vital importance to limit to 2 years the time after the accident within which the death must occur.

The House amendment further provided that where a person did actually die *within two years after the injury,* the widow and next of kin should have (1) not less than one year after the date of death within which to appoint an executor or administrator and start suit; (2) the additional period of six months after learning the identity of a "hit and run" defendant (but not more than 3 years after the accident) provided in G.L. Chapter 260, §4B and adopted in our draft; and (3) the periods provided by §§9 and 10 of Chapter 260 where the defendant is a nonresident, or dies before, or within 30 days after, the expiration of the statutory period.

We recognize the problem of the widow and next of kin of a person dying within the two year period, who may have very little time to start suit if death should occur just before the period has run. Further, the plaintiff may be unable to find and serve a "hit and run" driver or a non-resident, or may encounter difficulties in starting suit against the estate of a deceased defendant before an executor or administrator has been appointed for him. We therefore renew our recommendation for adoption of the draft act in our 31st report, incorporating the amendments made in the Committee on the Judiciary and that portion of the House amendment which gives the widow and next of kin of a person who dies within two years from the injury a reasonable amount of additional time within which to start suit where circumstances make it difficult or impossible to do so within the two year period.

Accordingly we recommend a redraft of House 2824, reading as follows:

DRAFT ACT

AN ACT RELATIVE TO DAMAGES RECOVERABLE UNDER THE DEATH STATUTES.

SECTION 1. Chapter 229 of the General Laws is hereby amended by striking out section 2, as most recently amended by section 2 of chapter 427 of the acts of 1949, and inserting in place thereof the following section:—

Section 2. A person (1) who by his negligence causes the death of a person in the exercise of due care; or (2) who by wilful, wanton or reckless act causes the death of a person, whether or not in the exercise of due care; or (3) who operates a common carrier of passengers and by his negligence or by his wilful, wanton or reckless act causes the death of a passenger, whether or not in the exercise of due care, shall be liable in damages in the

sum of not less than two thousand nor more than twenty thousand dollars, to be assessed with reference to the degree of his culpability and to be distributed as provided in section one; except that (1) the liability of an employer for the death of a person in his employment shall not be governed by this section; and (2) a person operating a railroad shall not be liable for negligence in causing the death of a person while walking or being upon such railroad contrary to law or to the reasonable rules and regulations of the carrier; and (3) a person operating a street railway or electric railroad shall not be liable for negligence for causing the death of a person while walking or being upon that part of the railroad not within the limits of a highway. A person shall be liable for the negligence or the wilful, wanton, or reckless act of his agents or servants while engaged in his business to the same extent and subject to the same limits as he would be liable under this section for his own act, except that the damages shall be assessed with reference to the degree of culpability of his agents or servants. Actions under this section shall be commenced in tort by the executor or administrator of the deceased within two years after the injury which caused the death, provided, however, that the time for bringing an action hereunder to recover for the death of a person who dies within two years after the injury which caused the death shall never be less than one year from the date of death, or such period thereafter as is provided by sections four B, nine or ten of chapter two hundred and sixty.

SECTION 2. Section 2A of said chapter 229, inserted by section 3 of said chapter 427, is hereby repealed.

SECTION 3. Section 2C of said chapter 229, as amended by chapter 250 of the acts of 1951, is hereby repealed.

SECTION 4. Section 6E of said chapter 229, inserted by section 7 of chapter 427 of the acts of 1949, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:—

The amount of damages which may be awarded in an action brought under section two B shall not be less than two thousand nor more than twenty thousand dollars.

SECTION 5. This act shall take effect on January first, nineteen hundred and fifty-eight and shall apply to all causes of action accruing after said date.

H. 1973, AS TO WORKMEN'S COMPENSATION AND ACTIONS AGAINST THIRD PARTIES

(Referred by Resolves Chapter 117)

This bill is described in its title as

AN ACT PERMITTING AN EMPLOYEE, WHILE RECEIVING COMPENSATION, TO PROCEED IN LAW AGAINST A PERSON OTHER THAN THE INSURED, PROVIDED THAT IF HE RECOVERS IN HIS ACTION AGAINST THE OTHER PERSON ALL COMPENSATION RECEIVED SHALL BE RETURNED TO THE INSURER.

This bill would strike out Section 15 of G.L. Chapter 152 (the Workmen's Compensation Act) and substitute a new Section governing cases in which the injury while suffered in the course of employment was caused by the negligence or other fault of a third person against whom the injured employee may have an action for damages. The proposed new Section while not so extreme as the bill referred to the Council last year* nevertheless would work a radical change in the policy and plan of the Compensation system.

The present and the proposed new Section are both long and for clarity of discussion we quote only the first part of each section so as to bring out the substance of the proposed change. The present Section 15 provides

"S. 15. Legal Liability for Injuries; Election, etc.—Where the injury for which compensation is payable was caused under circumstances creating a legal liability in some person other than the insured to pay damages in respect thereof, the employee may at his option proceed either at law against that person to recover damages or against the insurer for compensation under the chapter, but, except as hereinafter provided, not against both. If compensation be paid under this chapter, the insurer may enforce, in the name of the employee or in its own name and for its own benefit, the liability of such other person, and if, in any case where the employee has claimed or received compensation within six months of the injury, the insurer does not proceed to enforce such liability within a period of nine months after said injury, the employee may so proceed. In either event the sum recovered shall be for the benefit of the insurer unless such sum is greater than that paid by it to the employee. If the insurer brings the action four-fifths of the excess shall be paid to the employee, and if the employee brings the action he shall retain the entire excess."

The proposed new Section (H. 1973) provides

"Chapter 152 of the General Laws is hereby amended by striking out section 15, as amended, and inserting in place thereof the following section:—

"*Section 15.* Where the injury for which compensation is payable was caused under circumstances creating a legal liability in some person other than the insured to pay damages in respect thereof, the employee may proceed against the insurer for compensation under this chapter and also against the said person to recover damages; provided, that action against the said person is brought within six months after said injury. If compensation be paid under this chapter, the insurer, in the event such action is not brought by the employee within the said six months, may enforce, in the name of the employee or in its own name and for its own benefit, the liability of such other person, and if, in any case where the employee has claimed or received compensation within six months of the injury without having brought action against the other person, the insurer does not proceed to enforce such liability within a period of nine months after said injury, the employee may so proceed. The

*H. 1607 of 1955, see 31st report pp. 33-35.

employee may at any time waive his right to proceed against the other person by giving written notice of such intention to the insurer. In the event that action is brought against the other person the insurer, if it so requests, shall be represented in all proceedings. In either event the sum recovered shall be for the benefit of the insurer unless such sum is greater than that paid by it to the employee. If the insurer brings the action four fifths of the excess shall be paid to the employee, and if the employee brings the action he shall retain the entire excess unless the insurer, as hereinbefore provided, requested to be and was represented in the proceedings, in which event four fifths of the excess shall be paid to the employee."

The new section thus proposes to eliminate the option and allow the employee to bring parallel proceedings, one under the Compensation Act and the other against the third person, at common law outside the Act.

The history of the Compensation Act has been summarized by Horovitz in his book on "Workmen's Compensation" as follows:

"Unquestionably, compensation laws were enacted as a humanitarian measure, to create a new type of liability,—liability without fault,—to make the industry that was responsible for the injury bear a major part of the burdens resulting therefrom. It was a revolt from the old common law and the creation of a complete substitute therefor, and not a mere improvement therein. It meant to make liability dependent on a relationship to the job, in a liberal, humane fashion, with litigation reduced to a minimum. It meant to cut out narrow common-law methods of denying awards." (See pp. 7-8.)

And from the beginning it has been and still is optional with the employee to choose between the Compensation law of liability without fault or take his more uncertain chances with a common law action for negligence, but he cannot have it both ways: Section 5 of Part I of Chapter 751 of the Acts of 1911 provided:

"SECTION 5. An employee of a subscriber shall be held to have waived his right of action at common law to recover damages for personal injuries if he shall not have given his employer, at the time of his contract of hire, notice in writing that he claimed such right, or if the contract of hire was made before the employer became a subscriber, if the employee shall not have given the said notice within thirty days of notice of such subscription. An employee who has given notice to his employer that he claimed his right of action at common law may waive such claim by a notice in writing which shall take effect five days after it is delivered to the employer or his agent."

That is now Section 24 of Chapter 152.

The option provided by Section 15 of Chapter 152 has also been a part of the system from the beginning. (See Section 15 of Part III of Chapter 751 of 1911 and Chapter 448 of the Acts of 1913.)

Since the employer under this system was subjected to liability for compensation regardless of fault on his part the purpose of Section 15 in cases in which a third person caused the injury was and is primarily to protect the insurer by providing the right to cover the loss under the Compensation Act by suing the third party on the claim, if it existed, of the employee against the 3rd party. If in such a suit damages are recovered against the 3rd party in excess of the amount needed to reimburse the amount of Compensation liability the act provides for the division of such excess in certain stated proportions between the insurer and the employee.

Every law suit for negligence involves uncertainty of results—uncertainty of the facts, of the witnesses, their continuance of life, their character, their memories, their veracity and the competence of the lawyers in preparing, negotiating and trying the case before a court or a jury.

In view of all these uncertainties Section 15 provides that the employee must elect within a certain specified time whether he will claim under the Compensation Act or take his chances on the uncertainty of an independent action against the 3rd party. The action may have to be brought against the 3rd party within a year of the injury. If the employee decides to claim compensation under the act he still has a contingent interest if a suit is brought by the insurer in part of the damages recovered in that suit if any and if he receives or claims compensation within 6 months of the injury and the insurer does not sue the 3rd party within nine months of the injury *then* the employee may bring the suit and the excess of damages if any will be distributed between the insurer and the employee. If the employee brings the suit, the excess is retained by him.

The proponents of H. 1973 wish, as already stated, to get rid of the required election and allow the employee to start parallel proceedings thus placing control of the suit provided by Section 15 primarily to protect the insurer against loss into the original control of the employee and his lawyer and leave the insurer in a position of uncertainty as to the facts, evidence, witnesses, etc. in the claim against the 3rd party. We think the requirement of election should remain and that to eliminate it would be inconsistent with the policy and plan of the Compensation Act which should not be whittled away.

Last year a bill (H. 1607 of 1955 above referred to) was referred to the Council to allow an employee to claim under the Compensation Act and also to sue the employer for negligence. The Council

discussed that bill at some length and concluded the bill was opposed to the whole policy and plan of Workmen's Compensation regardless of negligence, that it would result in "more delay, more expense, more injustice, more congestion in the Courts, more litigation, more dissatisfaction and irritations in all directions" and that it was "thoroughly unsound."

We notice from the legislative bulletin that the same bill (H. 1343 of 1956) was again filed this year. The present bill is not as extreme as that bill but it still upsets the balance of the Compensation system. We do not recommend H. 1973.

HOUSE 1572—ON ENTRY OF WRITS BEFORE THE RETURN DAY

This bill reads:

"Writs and other legal process returnable on Saturdays, Mondays or other days specified by law may be entered in the appropriate court not only on such days but also at any time within three days prior to such specified days. If so entered, the court shall accept such process and enter it on the return day stated in such process."

We do not recommend this bill.

There is no problem in the Superior Court under its Rule 6. Entry of a writ before the return day takes effect on the return day; see National Bank of Commerce v. New Bedford, 175 Mass. 257 (1900).

It is not clear under District Court Rule 6 whether parties can as of right send in writs by mail or otherwise before the return day, although some District Courts permit this and hold them for entry on the return day. The first paragraph of this Rule provides

District Court Rule 6: All writs, processes, notices to appear, citations and proceedings shall be made returnable at nine o'clock in the forenoon and shall be entered at no time except between that hour and twelve o'clock noon on the return day save as herein provided. Except as to all writs, special precepts and orders of notice thereunder each District Court may prescribe any other hour or time of day for return of any process.

Since the original difficulty chiefly arises out of the uncertainty in the interpretation of this Rule, it is better to resolve it by an amendment of the Rule rather than by legislation. One of the functions of the Judicial Council under G. L. C. 221 S. 34B is to "submit for the consideration of the justices of the various courts such suggestions in regard to rules of practice and procedure as it may be deemed advisable."

Accordingly, we recommend to the Administrative Committee of the District Courts, and to the justices thereof at their next meeting, that consideration be given to an amendment of Rule 6 to carry out the purposes of House No. 1572.

We make the same recommendation to the justices of the Municipal Court of the City of Boston with regard to an amendment of the similar provisions of its Rule 6.

H. 720 AS TO FURNISHING COPIES OF MEDICAL REPORTS IN MOTOR VEHICLE INJURY CASES

(Referred by Resolves Chapter 32)

This bill reads

"SECTION 1. Section 113J of chapter 175 of the General Laws, inserted by chapter 334 of the acts of 1954, is hereby amended by adding at the end of the following sentence:—If an insurer or an injured party fails to furnish the other with copies of reports of all medical examinations and treatment within ten days after request therefor has been made, or within such further time as the court may allow, the court may make and enter such order, judgment or decree as justice requires.

"SECTION 2. This act shall take effect on June eighteenth, nineteen hundred and fifty-six, and shall apply to actions and suits there pending as well as to actions and suits commenced after said date."

We do not recommend the bill as submitted.

The present statute to which the proposed sentence would be added reads as follows:

SECTION 113 J. OF G. L. CHAPTER 175.

(Inserted by Chapter 334 of the Acts of 1954)

"Copies of Reports of Medical Examinations, When to Be Furnished.—Any company issuing or executing a motor vehicle liability policy or bond, both as defined in section thirty-four A of chapter ninety, which requests and makes a medical examination of a person injured in an accident involving a motor vehicle, shall, upon request of the injured party or his attorney, furnish said party or attorney with copies of reports of all medical examinations made by said insurer; provided, that such injured party shall, upon request of said insurer, furnish it with copies of reports of all medical examinations and treatment made by his attending physician or physicians. (1954, 334, appvd. April 20, 1954; effective 90 days thereafter.)

The purpose of adding the sentence proposed by H. 720 as stated by the petitioner was "to attach a penalty clause for those insurers who refuse."

As we pointed out in our 31st report in connection with another bill referred to us in 1955, the Supreme Judicial Court said of a motor vehicle policy in Abrams v. Factory Mutual Liability Insurance Co., 298 Mass. 141, at p. 143:

> "The policy not only includes a promise by the insurer to defend against claims and law suits, but gives it the sole right to defend to the entire exclusion of the insured. Such a clause in such a policy has been referred to as creating both an obligation and a privilege, Rollins v. Bay View Auto Parts Co. 239 Mass. 414, 420."

While the insurer technically is not a "party" to an action for injuries it is under contract to defend and provide counsel to defend the party insured and is under a contractual liability to pay later to the extent of the contract if there is judgment against the insurer. For the preliminary proceedings before trial the insurer and counsel provided for the defendant are actually concerned with a duty to defend. The statute of 1954 above quoted actually inserts a mandatory provision in every policy since then, that copies of medical reports shall be furnished on request. This is part of the procedural practice known as "discovery" for the purpose of clarifying issues before trial. The insurer and defense counsel provided are, therefore, bound to comply with the administrative procedure.

We think it probable that the courts now have authority to enforce the mandatory provisions of the statute quoted, but, to avoid uncertainty we think it will be of assistance to the bench and bar if simple procedure is provided for specific performance of the obligation added to all policies since the act of 1954. Accordingly, we recommend the following:

DRAFT ACT

SECTION 1. Section 113J of chapter 175 of the General Laws, inserted by chapter 334 of the acts of 1954, is hereby amended by adding at the end the following sentences:—If an insurer or an injured party fails to comply with this section within ten days after written request therefor has been made, the court may enforce this section by an order to show cause why it should not be complied with within such time as the court may order, subject to proceedings for contempt for failure to comply with the order of the court. If an action has already been entered by an injured party, such order to show cause may be made on motion in the pending action.

SECTION 2. This act shall apply to actions and suits pending at its effective date as well as those commenced thereafter.

SENATE 435, RELATIVE TO AN INTERSTATE COMPACT ON INTERPLEADER

We have received copies of the explanatory article on this matter in the Columbia Law Review for January 1955 and of the action in Pennsylvania. We respectfully reserve this matter for later consideration.

TELEVISING AND BROADCASTING TESTIMONY

In our previous reports we called attention to the much discussed movement to televise and broadcast the taking of testimony in court and in hearings. Planned experiments have been tried in courts in Colorado and especially in Oklahoma, and the mechanics of such proceedings have been improved. Canon 35 of the American Bar Association Canons of Judicial Ethics still disapproves of the practice. The most serious problem involved in our opinion relates to the intangible effect on witnesses—the most important persons in trials in court. As we said in our 31st report (p. 50), "the ordeal of witnesses, and we mean honest witnesses, in being examined by lawyers or others is often a severe ordeal under any circumstances. They are often unaccustomed to such proceedings and are shy, nervous and frightened and uncertain. This is intensified when they are made conscious of being spectacles in a public drama on the screen or on the air."

Because of this intangible aspect which cannot be measured, we think the interests of justice outweigh the public educational tendencies, and we again recommend the following:

DRAFT ACT

Chapter 268 of the General Laws is hereby amended by adding at the end thereof the following new sections:—

SECTION 39. No person, firm, association or corporation shall televise, broadcast, take motion pictures or arrange for the televising, broadcasting, or taking of motion pictures within the Commonwealth of any proceedings in which the testimony of witnesses is or is to be taken, before a legislative, judicial or executive body or other public agency or tribunal. Violation of this section shall be punishable by a fine of one thousand dollars or a sentence to jail or the house of correction for not more than one year.

SECTION 40. No such body, agency or tribunal conducting such a proceeding in this Commonwealth, nor any one on its behalf shall require or permit any person to testify before televising, broadcasting or motion picture instruments or apparatus in operation. Any person may of right refuse to testify before

such instruments or apparatus and no proceedings for contempt or other adverse proceedings shall be taken against him for such refusal nor shall such refusal be commented on or made the basis of any inference whatever adverse to the person so refusing.

Sections 39 and 40 may be enforced by proceedings in equity.

JURY COMMISSIONERS IN A LIMITED DISTRICT

For reasons stated at length in our 24th report (pp. 19-23, in 1948), we again renew our recommendation of the bill for a jury commission to select jurors in a district comprising the counties of Middlesex, Suffolk and Norfolk, based on the system successfully administered in Cleveland, Ohio. The movement for the more careful selection of jurors is gradually growing elsewhere and we believe the practice to be a sound one and worthy of consideration here as an experiment in a limited area of three contiguous counties. As stated in our 29th report (p. 40), we renew the recommendation of the draft act printed in the 24th report, pp. 23-26.

ADMINISTRATIVE COMMITTEE OF THE DISTRICT COURTS

In previous reports we have reprinted the substance of the circular letters of the Administrative Committee of the District Courts, to the justices, clerks and probation officers of those courts, (in 1955, see 31st report Appendix C, p. 56) in order to keep the annual information as to the work of these courts and of that committee available for convenient reference of the bench and bar. This year, in order to avoid expense in the printing of this report under our limited appropriation, we print in the appendix, only the first three pages, explaining the statistical information. The contents of the circular letters of February 1 and December 1, 1956, will be found in the Massachusetts Law Quarterly—that of February, in the issue of September 1956. That of December will appear in a later issue. Practitioners in the District Courts will do well to examine them with care, especially the discussion and forms under the Reciprocal Support Act in the 30th report, 60-68, in 1954 (40 Mass. Law Quart., No. 1, February 1955), and pp. 56-59 of the 31st report; and the discussion of the new act as to procedure

for commitment of the mentally ill (C. 637 of 1955), pp. 65-69 of the 31st report.

The Results of the Reciprocal Non-Support Act

A few years ago the Uniform Reciprocal Enforcement of Support Act was adopted and for about two years was administered in the Probate Courts. In 1954 we recommended that the jurisdiction be shifted to the District Courts. This recommendation was followed. The act seems to be justifying itself. The figures reported for the year are:

Number of Cases Initiated	840
Number of Cases Received from Other States	351
Amount of Money Collected	$318,407.29

As stated by the Administrative Committee, these figures "seem to indicate that the act was being widely enforced."

APPROPRIATIONS FOR THE JUDICIAL COUNCIL

The act of 1924 creating the Judicial Council (see p. 4 of this report) provided and still provides in Section 34C

> "No member of said council, except as hereinafter provided, shall receive any compensation for his services, but said council and the several members thereof shall be allowed from the state treasury out of any appropriation made for the purpose such expenses for clerical and other services, travel and incidentals as the governor and council shall approve."

For the first year of its work (1925) the budget (Chap. 211 of 1925, p. 168) contained

> "Item 51, Judicial Council
>
> "For expenses of the Judicial Council as authorized by Chapter 244 of the acts of 1924 a sum not exceeding $3,000."

That amount was appropriated annually for seven years. But as the work was done at the least possible public expense and as the cost of printing and clerical service was less than half of what it is today, the $3,000 was not all used and the annual appropriation began to decrease. Thereafter, the cost of printing, etc., increased and the variety of the subject matter of bills referred by resolves to the Council for report increased. A glance at the contents of this report will indicate the far-reaching nature of the subjects considered and reported on by the Council for the assistance of the General Court, the Judicial Department, the bar, the public, and occasionally on request of the Executive Department.

The list in the 27th report (pp. 31-49) in 1951 will show about 175 acts passed after recommendations of the Council, and a large number of negative reports on bills referred. These have increased since 1951 and this year 21 bills have been referred and are discussed in this report. Some questions of substantive law are referred to the Judicial Council by special resolves, thus extending the functions of the Council, and with few exceptions those questions have been answered, the exceptions involving investigations for which the Council is not equipped.

The Council is one of the oldest active Judicial Councils in the country and was one of the contributing influences leading to the movement for such Councils throughout the country. Ever since 1924 the reports of the Council have been reprinted by the Massachusetts Bar Association in the Massachusetts Law Quarterly, so that the bench and bar of the Commonwealth could be informed. Without the slightest desire to exaggerate its importance, we think it safe to suggest that the results of the work of the Council since its creation have been of far more value to the Commonwealth than the entire cost since 1924.

We are all aware that the Council has no control of the rising cost of essential services. But, because of existing circumstances, we recommend a modest increase in the budget items for such things as telephone and clerical and incidental services, from $2,000 to at least $3,250.

The Salary of the Secretary of the Judicial Council

Following a recommendation of the Judicature Commission of 1919-20, the Judicial Council was created in 1924. No salary for the Secretary was provided. After two years of service without compensation a salary of $3,500 was established in 1927 by Chapter 306 of that year, following a recommendation of the Council in its 2nd report (p. 69), and the salary continued at that figure for twenty years, until 1947. In that year, following a recommendation of the Council in its 22nd report for 1946 (p. 84), the salary was raised to $5,000 by Chapter 601 of the Acts of 1947, and it so appears in the Judicial Council act which is printed on page 4 of this report. While the salaries for other public professional services have been frequently and materially increased, there has been no change in this salary.

The Commonwealth is fortunate in having as Secretary of the Council a man who has made a financial sacrifice in holding the position and whose contribution to the Judicial Department cannot be measured in dollars.

In view of the nature of the professional work involved, and its essential relation to the functioning of the Judicial Council, we think there should be an increase, and we recommend that the salary be increased by $1,000. We strongly urge that the incoming 1957 legislature enact into law to take effect as early as possible, the following:

DRAFT ACT

Section 34C of Chapter 221 of the General Laws (Ter. Ed.), as appearing in Chapter 601 of the Acts of 1947, is hereby amended by striking out in the last sentence the words "five thousand" and substituting the words "six thousand," so that the sentence shall read:

"The Secretary of said Council, whether or not a member thereof, shall receive from the Commonwealth a salary of six thousand dollars."

EXPERIMENTAL PLAN FOR DISCRETIONARY REFERENCE OF SMALL CASES TO THE BOSTON MUNICIPAL COURT FOR TRIAL

The problem of the Superior Court backlog of cases involving small sums was given attention last year by the Judicial Survey Commission. Its Report (House 2620 of 1956, pp. 89-90) recommended the use of auditors to assist in cleaning up the existing backlog, but went on to say:

"We are not satisfied, however, that this practice is the best long-term solution to the problem. We have considered other possibilities, such as requiring trial in the district courts of motor vehicle cases involving small sums, even though the constitutional right to jury trial would necessitate an opportunity for a re-trial in the Superior Court. The risk of a multitude of such re-trials might be lessened by giving the district court's decision the status of an auditor's report, by making reasonable regulations with reference to costs, or otherwise. We recommend further study by the Judicial Council of possible means of stemming the inflow of jury cases."

In our 31st report (pp. 8012 of 1955) we pointed out that in more than half of the jury cases tried to a verdict in the Superior Court in the previous 2 years, there was no recovery, or less than $500. The pre-trial sessions in Suffolk County have turned up a large number of cases on the list in which a good deal less than $1000 appears to be involved, but in which one or both parties have been unwilling to make a final waiver of the right to a jury trial.

We suggest an experiment which we think worth trying in Suffolk County of references by the Superior Court in its discretion of cases involving less than $1000. to the Boston Municipal Court

for trial and finding or decision with a *remand* as of right to the Superior Court for jury trial if then claimed by either party.

A somewhat similar bill was presented to the House in 1956 as an amendment to House 2959 on District Court reorganization. The amendment applied to motor vehicle tort actions in all counties, no matter how much was involved. It also required a written report of findings of fact which was to be "prima facie evidence" of the matters included in it, as is now provided by G.L. c. 221 § 56 in the cases heard by auditors. It was rejected by the House by the narrow margin of 53 to 56, see Journal of the House, for August 1, 1956, pp. 2066-67.

We recommend the adoption of a much more limited draft act for a two-year experimental period. In the first place, we believe it should be limited to cases in Suffolk County to be tried in the Municipal Court of the City of Boston. This is because the other district courts are in process of making arrangements to handle the civil cases by full-time justices, as provided in the District Court Reorganization Act passed this year by the legislature. In the second place, we would limit it to actions at law involving less than $1,000, since it is to assist in handling cases involving small sums that these new procedures are needed. Finally, in order to keep the procedure flexible and simple, we do not recommend any formal written "report" to be "prima facie evidence." We believe what is needed is a simple written finding or decision by the justice who tries the case in the Municipal Court of the City of Boston.

We recommend the following:

DRAFT ACT

SECTION 1. Chapter 231 of the General Laws is hereby amended by inserting after Section 102B inserted by Section 3 of Chapter 616 of the Acts of 1954 the following section—

Section 102C. The superior court after the parties are at issue may of its own motion or on the motion of a plaintiff or defendant upon a finding by the court that if the plaintiff prevails there is no reasonable likelihood that his recovery will exceed one thousand dollars, refer any action at law pending in the county of Suffolk originally commenced in that court or removed thereto from the municipal court of the city of Boston, to said municipal court for trial.

Clerks of the superior court shall when a case is so referred transmit the order of reference and the original papers in the action or certified copies thereof, together with a copy of the docket entries, without charge to the clerk of the municipal court of the city of Boston.

Such an action shall be tried by a justice of the municipal court of the city of Boston. The justice shall file a written decision or finding with the clerk,

who shall forthwith notify the parties or counsel of record. Any party to the action aggrieved by the finding or decision may, as of right, have the case remanded for determination by the superior court. The request for remand shall be filed with the clerk of said municipal court within five days after notice of the findings or decision.

Upon the filing with the clerk of a request for a remand, the finding or decision shall be forthwith transmitted, with any original papers received from the superior court, to the clerk of the superior court of the county from which the case was referred. The clerk of the superior court shall forthwith notify the parties or counsel of record of the receipt and filing of said finding or decision.

The action shall thereafter be tried in the superior court. A party shall be held to waive any right to jury trial previously claimed, unless within ten days after the filing of the finding or decision in the superior court he shall file a statement that he insists on a jury trial.

SECTION 2. This act shall take effect on July first, nineteen hundred and fifty-seven, and shall not be operative after June thirtieth, nineteen hundred and fifty-nine.

FRANK J. DONAHUE, *Chairman*
FREDERIC J. MULDOON, *Vice-Chairman*
STANLEY E. QUA
JOHN E. FENTON
JOHN C. LEGGAT
ELIJAH ADLOW
KENNETH L. NASH
CHARLES W. BARTLETT
LIVINGSTON HALL
ERNEST H. ROSASCO

THE INDEX OF THE REPORTS AND LIST OF 187 STATUTES PASSED ON RECOMMENDATION OF THE JUDICATURE COMMISSION AND OF THE JUDICIAL COUNCIL—1919-1956

For the convenience of the legislature and the courts and practising lawyers we call attention to the fact that we annexed to our 27th report, in 1951, an alphabetical, and chronological, index to the contents of these reports since 1919, with an introductory statement, and also an index of the circular letters of the Administrative Committee of the District Courts. These circulars have been printed in each report since 1951.

Preceding the index is an annotated list of about 150 statutes passed on recommendation of the Judicature Commission and of the Judicial Council since 1919, with references to the reports where the reasons for each statute may be found.

This list of statutes brought down to 1954 numbered 177 with references and is reprinted for convenient reference for the bench and bar in the Massachusetts Law Quarterly for February 1955, Vol. 40, No. 1. References to five more statutes passed in 1955 will be found beginning on p. 5 of the 31st report and five more in 1956—see p. 6 of this report, bringing the total up to 187.

APPENDIX A.

STATISTICAL INDEX

APPENDIX B.

SUMMARY OF THE WORK ACCOMPLISHED BY THE VARIOUS COURTS

THE 72 DISTRICT COURTS OTHER THAN THE BOSTON MUNICIPAL COURT

FROM THE ADMINISTRATIVE COMMITTEE OF THE DISTRICT COURTS

To the Justices, Clerks and Probation Officers of the District Courts: December 1, 1956

We are forwarding herewith separately the annual compilation of statistics of the District Courts covering the period from July 1, 1955 through June 30, 1956. As usual, we present the five-year comparative figures:

	1951 to 1952	*1952 to 1953*	*1953 to 1954*	*1954 to 1955*	*1955 to 1956*
	1951 to 1952	*1952 to 1953*	*1953 to 1954*	*1954 to 1955*	*1955 to 1956*
Civil Writs Entered	51,496	54,871	57,109	63,798	73,868
Tried				8,732	8,170
Contract	28,124	31,104	31,016	32,132	35,642
Tried				2,355	2,253
Motor Vehicle Tort	12,985	14,358	14,612	20,104	26,276
Tried				2,259	2,150
Other Tort	2,392	2,137	2,226	2,095	2,233
Tried				305	328
Summary Process (Ejectment)	7,282	6,572	8,476	8,072	8,542
Tried				3,578	3,229
All Other Cases	713	700	779	1,395	1,175
Tried				235	210
Removals to S. C.	4,238	4,321	3,998	9,248	13,569
Removal of Motor Vehicle Torts to S. C.	2,667	2,641	2,599	7,756	11,965
Rep. to Appellate Div.	74	66	86	92	99
Appealed to Supreme Judicial Court	17	11	6	11	13
Supplementary Process	17,621	18,738	20,013	20,927	21,953
Small Claims	53,572	58,051	73,182	70,877	68,153
Criminal Cases Begun	177,161	194,324	202,334	202,126	201,730
Criminal Appeals	3,251	3,602	3,713	4,057	3,940
Drunkenness	52,557	54,859	53,100	52,917	51,517
Automobile Cases (Total)	85,293	96,367	103,825	103,374	104,784
Op. Under Inf. Int. Liquor	5,542	5,518	5,566	5,767	5,948
Int. Liquor Cases	189	287	315	257	231
Juvenile Cases Under 17 Years	5,544	6,200	6,676	6,934	8,169
Drunkenness Releases	26,702	27,609	26,885	26,066	24,886
Net Number Brought Before Court	26,055	27,241	26,215	26,901	26,631
Neglected Children	555	615	593	547	700
Inquests	53	45	39	38	26
Parking Tickets Returned	513,743	502,733	582,131	641,021	751,606
Number of Insane Commitments	5,615	5,763	5,761	5,763	5,745

Compiled by th

DISTRICT COURTS 1955 CENSUS	Civil Writs Entered	Tried	Contract Entered	Tried	Motor Vehicle Tort Entered	Tried	Other Tort Entered	Tried	Summary Process Entered (Ejectment)	Tried	All Other Cases Entered	Tried	Removals to S. C. (Total of All Removals)
1. Central Worcester	4,955	341	1,979	141	2,441	72	121	25	295	93	119	10	1,757
2. Springfield	5,796	171	3,588	71	1,812	37	148	9	208	51	40	3	1,156
3. 1st East. Middlesex, Malden	4,905	356	2,264	99	2,097	132	180	12	291	111	73	2	904
4. East Norfolk, Quincy	3,665	386	2,074	119	1,197	148	104	23	207	54	83	42	528
5. Roxbury	2,218	513	165	15	556	50	40	13	1,441	433	16	2	158
6. Dorchester	1,597	409	155	30	619	98	75	18	705	255	44	8	187
7. 3rd East. Middlesex, Cambridge	4,567	346	2,020	83	1,988	142	101	11	427	110	31	0	754
8. Southern Essex, Lynn	3,029	299	1,465	79	1,097	86	133	9	290	115	44	10	669
9. Lowell	2,599	173	1,298	45	913	47	104	18	267	62	17	1	386
10. 3rd Bristol, New Bedford	2,211	213	856	69	945	119	102	8	247	13	61	4	469
11. 2nd Bristol, Fall River	1,483	185	588	52	713	70	38	11	128	51	16	1	465
12. Lawrence	1,400	173	507	42	725	74	34	6	113	38	21	13	350
13. First Essex, Salem	1,601	167	1,053	100	416	32	59	4	68	31	5	0	248
14. West Roxbury	716	161	115	4	186	13	28	1	373	143	14	0	56
15. Northern Norfolk, Dedham	1,401	210	852	110	434	55	51	12	50	21	14	12	189
16. Somerville	2,359	344	1,133	55	904	35	43	4	249	230	30	20	408
17. 4th East. Middlesex, Woburn	1,452	268	884	108	457	113	45	10	60	37	6	0	190
18. 2nd East. Middlesex, Waltham	1,799	187	1,038	65	582	59	47	5	120	53	12	5	267
19. Newton	1,699	168	932	61	617	63	77	13	56	26	17	5	316
20. Brockton	1,665	192	845	56	606	67	41	8	115	45	58	16	290
21. Hampshire, Northampton	531	34	292	17	204	11	7	1	24	3	4	2	146
22. Chelsea	1,303	363	349	69	632	88	92	31	217	171	13	4	191
23. East Boston	851	321	99	10	361	57	40	4	340	250	11	0	132
24. Brighton	599	314	83	29	135	49	18	5	355	231	8	0	42
25. Central Berkshire, Pittsfield	724	47	484	27	148	7	14	0	41	8	37	5	137
26. 2nd Plymouth, Hingham	1,150	112	837	84	247	16	10	1	46	11	10	0	115
27. 1st Bristol, Taunton	779	69	397	24	263	19	26	5	63	20	30	1	124
28. Central Middlesex, Concord	591	60	338	20	197	16	17	1	31	23	8	0	82
29. 1st So. Middlesex, Framingham	1,174	234	751	129	323	74	27	8	65	22	8	1	203
30. South Boston	674	172	34	4	68	16	17	2	553	150	2	0	26
31. Brookline	1,542	127	916	53	491	38	44	4	85	27	6	5	233
32. No. Cent. Essex, Haverhill	804	109	291	52	358	31	49	8	52	12	54	6	177
33. Holyoke	558	59	250	15	209	9	25	0	70	35	4	0	158
34. 1st So. Worcester, Webster	344	23	192	10	109	6	7	1	26	6	10	0	58
35. 4th Bristol, Attleboro	542	52	342	10	155	18	4	0	38	24	3	0	76
36. Fitchburg	922	36	566	5	285	4	18	0	35	27	18	0	215
37. West. Norfolk, Wrentham	670	75	454	29	186	18	8	8	18	18	4	2	89
38. Chicopee	294	28	98	5	106	1	3	1	80	18	7	3	62
39. Franklin, Greenfield	373	21	215	13	141	8	2	0	11	0	4	0	97
40. 1st No. Worcester, Gardner	345	30	247	7	71	16	7	1	13	0	7	6	39
41. So. Norfolk, Stoughton	576	84	395	56	149	19	9	0	17	8	6	1	87
42. 1st Barnstable, Barnstable	600	8	419	5	140	3	4	0	35	0	2	0	140
43. East. Essex, Gloucester	442	20	307	14	81	1	20	0	29	5	5	0	83
44. Peabody	456	41	259	10	137	11	27	7	29	12	4	1	104
45. 3rd Plymouth, Plymouth	512	50	372	20	91	14	16	4	23	11	10	1	47
46. West. Hampden, Westfield	201	8	114	2	56	2	12	1	15	2	4	1	45
47. 3rd South Worcester, Uxbridge	152	30	81	15	54	3	4	0	9	8	4	4	36
48. 4th Plymouth, Wareham	397	16	241	12	127	3	15	1	12	0	2	0	70
49. 1st. No. Middlesex, Ayer	239	11	160	6	59	3	2	0	11	2	7	0	27
50. 1st East. Worcester, Westboro	218	18	142	7	62	0	3	0	8	8	3	3	34
51. Charlestown	649	81	32	2	259	13	55	4	302	61	1	1	128
52. Marlborough	388	17	174	5	179	8	8	0	23	4	4	0	119
53. 2nd East. Worcester, Clinton	193	17	86	4	85	6	6	1	14	6	2	0	44
54. Eastern Hampden, Palmer	152	22	95	10	37	3	5	1	8	5	7	3	16
55. Leominster	345	12	193	3	119	1	3	0	24	8	6	0	80
56. 3rd So. Worcester, Milford	321	20	137	7	125	4	3	1	15	8	41	0	74
57. North Berkshire, No. Adams	152	29	69	5	48	4	2	2	16	16	17	2	37
58. Newburyport	251	31	160	15	73	10	3	0	14	6	1	0	31
59. West. Worcester, E. Brookfield	215	17	164	6	37	5	3	2	10	4	1	0	25
60. 2nd Barnstable, Provincetown	287	16	228	6	44	2	3	1	10	7	2	0	25
61. 2nd Essex, Amesbury	166	11	104	2	46	2	4	0	8	4	4	3	30
62. Natick	400	18	242	5	109	8	7	0	12	5	30	0	58
63. 4th Berkshire, Adams	91	13	59	6	24	3	0	0	8	4	0	0	3
64. So. Berkshire, Gt. Barrington	106	6	78	5	17	0	4	0	3	1	4	0	11
65. Lee	115	3	58	3	54	0	0	0	1	0	2	0	14
66. East. Franklin, Orange	50	9	37	3	10	4	0	0	3	2	0	0	5
67. 3rd Essex, Ipswich	125	3	74	1	16	0	5	2	0	0	30	0	14
68. East. Hampshire, Ware	59	5	39	0	14	4	0	0	3	1	3	0	11
69. Winchenden	26	0	14	0	10	0	1	0	1	0	0	0	4
70. Dukes, Edgartown	38	0	27	0	6	0	3	0	1	0	1	0	4
71. Williamstown	39	6	25	2	8	0	0	0	3	3	3	1	8
72. Nantucket	20	0	11	0	7	0	0	0	2	0	0	0	6
	73,868	8,170	35,642	2,253	26,276	2,150	2,233	328	8,542	3,229	1,175	210	13,569

ETTS FOR THE YEAR ENDING JUNE 30, 1956 AS REPORTED BY THE CLERKS OF SAID COURTS

piled by the Administrative Committee of District Courts

Removals to S. C. (Total of All Removals)	Total Removals of Motor Vehicle Torts to S. C.	Reported to App. Div.	Appealed to S. J. C.	Supplementary Process	Small Claims	Criminal Cases Begun	Criminal Appeals	Drunkenness (Total No. of Complaints)	Automobile Cases (Total)	Operating Under Influence of Intoxicating Liquor	Intoxicating Liquor Cases	Juvenile Cases Under 17 Yrs.	Drunkenness Releases	Net Number Brought Before the Court	Neglected Children	Inquests	Parking Tickets Returned	No. of Insane Commitments	Uniform Reciprocal Enforcement of Support, Chapter 273A			
																			No. Cases Initiated	No. Cases Received from Other States	Amount of Money Collected	
1,757	1,678	6	1	1,591	4,565	14,140	124	3,225	7,314	164	7	636	1,558	1,667	46	0	55,868	868	54	15	11,916.59	1.
1,156	1,073	12	1	1,496	4,343	22,457	54	4,373	16,510	162	3	321	1,950	2,423	44	0	66,162	220	50	19	22,149.40	2.
904	823	6	2	1,135	2,440	5,898	139	947	4,149	162	0	282	411	536	6	0	37,936	73	30	25	26,827.50	3.
528	476	5	0	930	2,762	4,418	150	1,423	2,062	232	1	291	425	998	3	1	5,435	64	29	7	4,570.08	4.
158	134	1	3	991	2,359	18,262	351	4,708	9,341	150	16	655	2,553	2,155	98	1	103,672	4	116	23	47,709.69	5.
187	170	0	0	1,945	2,072	5,548	102	1,414	2,007	94	1	540	877	537	21	0	37,897	0	31	5	16,351.25	6.
754	702	7	0	860	2,057	7,700	141	2,110	3,493	187	3	252	1,131	979	43	5	55,390	151	11	16	18,583.22	7.
669	574	5	0	1,120	1,985	5,105	37	2,520	2,391	173	5	201	836	1,684	13	0	27,022	52	28	8	11,063.69	8.
386	361	5	0	512	3,123	5,115	31	1,046	2,254	92	6	161	788	258	35	0	20,852	154	45	5	13,099.15	9.
469	396	15	0	262	2,841	3,875	104	1,337	921	185	12	220	604	733	5	0	6,164	191	33	6	0	10.
465	443	0	0	152	1,055	4,029	202	1,562	1,428	196	20	180	991	571	0	0	14,523	57	20	2	4,031.40	11.
350	317	3	1	106	1,042	2,710	47	1,099	1,081	114	26	144	714	385	12	0	20,116	13	6	7	10,903.71	12.
248	199	0	0	338	1,119	3,162	119	1,070	1,355	177	2	125	661	409	14	0	13,261	630	16	4	3,926.00	13.
56	40	0	0	487	1,179	2,851	103	673	1,491	55	0	332	463	210	4	0	9,482	2	16	7	5,917.00	14.
189	161	4	0	517	769	1,667	57	399	1,033	89	0	89	214	185	5	1	1,643	149	7	2	6,623.50	15.
408	382	3	0	521	1,074	3,106	61	1,172	455	103	4	94	877	295	8	0	17,611	9	11	8	5,393.90	16.
190	169	5	1	597	1,081	1,730	53	693	734	91	0	103	308	385	1	0	809	16	7	8	4,138.00	17.
267	239	1	0	429	1,248	2,866	106	998	1,194	110	0	136	661	337	10	3	16,111	505	6	3	5,316.00	18.
316	265	1	0	385	1,054	2,788	22	433	2,015	47	0	41	187	246	0	2	18,535	21	9	1	7,527.70	19.
290	241	2	0	375	1,020	2,943	85	714	1,293	75	10	195	86	628	2	1	12,430	49	16	10	13,243.00	20.
146	144	0	0	85	921	2,333	60	360	1,412	101	9	74	87	273	10	0	6,300	401	2	3	440.00	21.
191	165	1	0	599	1,146	4,673	162	1,262	1,172	96	13	184	594	668	29	0	5,944	0	15	7	5,998.00	22.
132	117	0	0	324	848	2,201	59	612	831	28	1	216	356	256	15	0	16,682	4	7	4	2,824.00	23.
42	36	2	0	343	899	4,661	82	742	3,359	24	5	88	529	213	4	1	27,666	0	6	4	4,587.05	24.
137	97	1	0	178	1,805	3,711	19	469	2,856	59	0	99	155	314	6	0	15,211	2	21	4	3,965.75	25.
115	94	1	0	593	1,030	1,772	114	565	682	145	3	127	183	382	9	4	799	30	12	7	10,060.15	26.
124	105	2	0	106	666	1,967	71	306	1,026	83	3	92	160	146	0	0	1,559	372	9	10	0	27.
82	68	0	0	150	435	2,416	43	296	1,852	149	0	78	69	227	7	0	672	149	2	0	430.00	28.
203	170	0	0	274	836	2,820	68	485	1,281	129	0	101	70	415	6	0	169	42	3	15	9.00	29.
26	17	1	0	111	518	4,309	96	1,622	1,971	61	6	119	990	632	21	0	10,864	0	21	4	1,803.00	30.
233	188	2	2	543	596	2,874	45	255	1,680	49	0	66	58	197	0	0	32,805	4	13	4	2,750.00	31.
177	140	1	0	215	592	1,546	34	673	412	43	1	65	477	196	2	0	2,528	14	16	1	6,023.30	32.
158	131	0	0	93	801	1,946	4	1,027	548	101	12	76	449	578	17	0	11,342	5	4	12	2,048.70	33.
58	49	0	0	70	979	2,635	31	446	1,748	126	6	30	199	247	9	0	2,121	8	5	4	2,863.00	34.
76	65	1	0	348	1,110	1,669	46	127	595	109	1	78	3	124	5	0	1,759	22	10	8	147.00	35.
215	191	0	0	311	744	1,784	33	762	608	55	0	157	239	523	14	0	13,482	9	11	2	3,204.40	36.
89	75	2	1	180	906	1,855	32	223	1,309	95	1	120	93	130	2	0	0	358	1	3	1,287.50	37.
62	62	0	0	64	517	2,288	26	628	1,531	165	3	25	263	365	13	0	5,725	2	6	3	0	38.
97	94	0	0	406	1,150	1,247	20	264	726	63	8	48	35	229	0	0	8,468	8	11	4	1,957.00	39.
39	34	0	0	225	701	1,321	26	488	543	69	2	57	267	221	18	0	3,086	206	7	4	3,134.50	40.
87	65	0	1	181	556	939	96	163	642	60	0	87	6	157	0	0	303	2	2	4	1,380.00	41.
140	75	0	0	123	962	2,806	52	865	1,020	149	7	107	647	218	0	0	2,607	4	8	7	0	42.
83	56	0	0	107	277	1,068	35	340	173	44	0	65	184	156	18	1	4,807	0	15	2	0	43.
104	71	0	0	106	316	1,306	22	481	593	80	3	33	72	409	4	0	3,223	5	5	3	865.00	44.
47	38	1	0	131	642	982	45	274	262	94	5	97	75	199	6	0	898	9	5	2	42.00	45.
45	39	0	0	61	639	1,429	9	191	954	59	1	75	23	168	19	0	2,401	3	2	5	2,885.00	46.
36	31	0	0	20	253	290	8	33	104	13	0	12	10	23	0	0	261	2	3	3	43.76	47.
70	62	1	0	67	642	1,221	57	302	532	118	3	75	120	182	0	1	9	12	5	1	2,007.00	48.
27	25	0	0	96	218	2,929	44	339	2,200	166	2	53	11	328	0	0	206	12	0	1	173.00	49.
34	32	0	0	47	337	1,138	9	135	694	49	3	31	53	82	0	0	0	720	3	1	920.00	50.
128	107	0	0	141	278	3,316	90	1,480	1,350	32	0	131	695	785	11	0	8,523	0	5	1	2,313.00	51.
119	116	1	0	49	577	759	90	184	225	36	0	51	14	170	0	1	789	5	9	6	3,069.00	52.
44	44	0	0	114	307	873	15	129	593	21	7	47	72	57	14	0	2,148	16	10	5	78.00	53.
16	16	0	0	44	707	1,394	15	148	1,048	60	0	41	1	147	9	0	464	11	5	2	3,290.00	54.
80	76	0	0	136	347	864	21	323	339	51	1	11	63	260	0	0	1,449	21	6	4	18.00	55.
74	70	0	0	41	456	354	14	69	133	9	0	21	52	17	1	0	2,281	10	1	3	0	56.
37	37	0	0	42	277	780	16	283	395	25	0	34	56	227	1	0	4,951	0	2	2	400.00	57.
31	19	0	0	55	705	1,556	30	588	715	60	1	82	391	197	33	0	2,800	4	2	0	1,081.40	58.
25	17	0	0	60	318	809	17	232	388	67	0	25	121	111	6	1	0	8	5	4	865.00	59.
25	20	0	0	76	840	1,005	17	289	380	59	0	51	197	92	0	0	19	2	3	2	1,589.00	60.
30	16	0	0	33	206	819	12	292	376	56	4	27	159	133	4	1	950	3	3	2	1,979.00	61.
58	49	0	0	92	253	1,669	19	184	1,352	66	0	16	24	160	2	0	2,660	1	3	1	50.50	62.
3	2	0	0	28	310	506	6	137	326	29	1	15	51	86	0	1	1,010	11	1	0	0	63.
11	7	0	0	18	334	428	1	84	210	11	0	20	24	60	7	0	124	4	1	3	577.50	64.
14	13	1	0	19	134	642	16	80	483	32	0	20	18	62	7	0	0	0	1	0	100.00	65.
5	5	0	0	13	146	133	1	34	64	11	2	9	26	8	0	0	0	5	2	2	728.00	66.
14	14	0	0	30	138	189	1	90	52	19	0	5	59	31	1	0	260	0	0	0	0	67.
11	11	0	0	26	195	132	3	34	56	12	0	2	25	9	0	0	224	0	2	0	0	78.
4	4	0	0	5	62	231	6	58	93	14	0	4	17	41	0	0	28	0	1	0	120.00	69.
4	3	0	0	22	143	234	2	50	82	9	0	15	2	48	0	0	0	4	7	0	1,010.00	70.
8	6	0	0	3	128	342	5	33	214	11	1	2	5	28	0	1	110	1	0	1	0	71.
6	6	0	0	0	62	189	7	65	73	11	0	7	42	23	0	0	0	6	0	0	0	72.
13,569	11,965	99	13	21,953	68,153	201,730	3,940	51,517	104,784	5,948	231	8,169	24,886	26,631	700	26	751,606	5,745	840	351	318,407.29	

UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT, CHAPTER 273A

Number of Cases Initiated	840
Number of Cases Received (Other States)	351
Amount of Money Collected	$318,407.29

The number of entries increased substantially from the 63,798 of the prior period to 73,868 of the current one. This in a large measure is due to the enactment of General Laws, Chapter 218, Section 19, as amended (Acts 1954, Chapter 616), which requires all of the so-called motor vehicle tort cases to be entered in the district courts. As this act became effective on October 1, 1954, our next prior report contained statistics for nine months of its operation and can therefore not be easily compared with the present figures, which cover a full year. It may be stated, however, that of the 26,276 motor vehicle tort entered, 11,965 were removed to the Superior Court, leaving a total of 14,311 in the district courts, which percentage wise means that over 54% of the entries were not removed. It shows also that in last year's report of the 20,104 that were entered, 7,756 were removed, leaving 12,348 in the district courts. There were, therefore, roughly 2,000 more motor vehicle tort cases left in the district courts this year than last. There was no particular change in either tort entries from the rather constant five-year average. In passing, it should be noted that the number of contract entries increased by over 3,500, continuing its upward trend to the highest level since 1933. The number of cases that actually went to trial dropped from 8,732 to 8,170, a total of 562. Percentage wise calculated upon the number of entries less removals means that 13,54% of civil entries left in the courts actually went to trial. As stated last year, these figures do not include trials held in small claims cases the entries of which totalled 68,153, or supplementary process cases of 21,953. The latter type of case shows an increase of just over 1,000.

Summary process cases increased nearly 500 to 8,542, the largest number since 1949. Despite the fact that more than 5,000 additional cases remained in the district courts to be dealt with, only seven more—99—were appealed to the Appellate Division, and but two more—13—were entered in the Supreme Judicial Court.

The supplementary process cases gained more than a thousand over the preceding period, which in turn was greater by a little less than a thousand than the prior year, but the small claims cases again registered a loss over the prior year; this year totalling over 2,700.

On the criminal side, there appears to be a rather constant figure for each of the last three years slightly in excess of 200,000, with roughly 4,000 appeals from decisions in these cases taken. The number of drunkenness cases once again continues the trend of the past four years, reporting a total of 51,517, which is a decrease of 1,400. Releases for drunkenness were given in just over 1,100 less instances, keeping relative pace with the number arrested so that about the same number faced the court. The figures reflect another increase in the operating under the influence of intoxicating liquor offense to a total of 5,948, which is a new high figure for this five year period. In fact, it is the highest figure ever reported. There was likewise a greater number of automobile cases to a new high of 104,784. The number of intoxicating liquor cases—selling, keeping and exposing for sale illegally, etc.—again showed a reduction to the lowest figure in four years—231. Unfortunately, there has been a striking increase in the number of juveniles brought before the courts, continuing a trend of the past several years to the highest figure we have ever recorded—8,169. The number of neglected children took a decided jump from 547 to 700, which is the highest number reported since this item was included in our statistical sheet six yeas ago. The number of inquests held again was reduced following a trend of several years to 26. The number of insane commitments shows a figure of 5,745, which is substantially the same for at least the past six years.

There was a large gain in the number of parking tickets to a new high figure of 751,606. This amount of business is rather burdensome on the clerk's offices in many courts where clerical assistance has not been provided to keep pace with this volume of work. Roxbury, alone, report over 100,000 cases.

The statistical sheet contains the first yearly compilation of results obtained under the Uniform Reciprocal Enforcement of Support Act, Chapter 273A, General Laws (Ter. Ed.), Acts 1954, Chapter 556, effective as of October 1, 1954. The total collected of $318,407.29 would seem to indicate that the act was being widely enforced.

Once more these figures demonstrate that considerably in excess of 1,000,000 people had matters of importance to them dealt with by the district courts during the past reportable year. 751,606 parking tickets, 201,730 criminal cases, 73,868 civil writs entered, 21,953 supplementary process, 68,153 small claims, 8,169 juvenile cases: total, 1,125,479 cases. As was said last year: "Though there are many 'repeaters' and many are accused of more than one offense, this latter figure does not include the 155,602 defendants

in civil cases, nor witnesses in any case, nor any of the law enforcement officers, or the representatives of the diverse social service organizations that attend these sessions."

Because the Legislative session was prolonged into October, it has not seemed wise to publish this letter until after its prorogation in order that it might contain some of the more essential enactments of the 1956 session. Among these are two important changes, one dealing with the reorganization of the district courts and the extension of full-time service, and the other relative to the reorganization of the correctional system of the Commonwealth, including the probation service.

ADMINISTRATIVE COMMITTEE OF THE DISTRICT COURTS

KENNETH L. NASH, *Chairman* ERNEST E. HOBSON
FRANK L. RILEY ARTHUR L. ENO
LEO H. LEARY

NOTE: For the fuller report see Mass. Law Quarterly for December, 1956.

SUPREME JUDICIAL COURT

During the court year September 1, 1955, to August 31, 1956, the Supreme Judicial Court decided 243 cases[1] with opinions and 28 cases by rescripts, not accompanied by opinions, as shown by the table below. There were also five advisory opinions. These opinions are reported beginning 333 Mass. 108 and ending 334 Mass. . . . .

Geographical Distribution of Full Bench Cases

	Opinions	*Rescripts Only*
Barnstable	7	—
Berkshire	4	—
Bristol	10	3
Dukes County	1	—
Essex	21	2
Franklin	2	1
Hampden	15	2
Hampshire	2	—
Middlesex	49	5

[1]Where one opinion covered more than one case, it has been counted as one case.

Nantucket	—	—
Norfolk	17	3
Plymouth	5	—
Suffolk	93	11
Worcester	17	1

There were 18 criminal cases; nine of these had typewritten transcripts of testimony.

As of the close of the September, 1956, consultation, there were pending five cases in which opinions had been written but not agreed to, and one case in which an opinion had not been written.

SUPREME JUDICIAL COURT ENTRIES FOR ALL COUNTIES

FOR THE YEAR BEGINNING SEPTEMBER 1, 1955 THROUGH AUGUST 31, 1956

(Not Including Full Bench Cases)

County	Equity	Transferred to Superior Court	Referred to Masters or Auditors	Prerogative Writs	Petitions for Admission to Bar	Other Proceedings
Barnstable	—	1	—	2	—	—
Berkshire	1	2	—	2	—	1
Bristol	—	—	—	—	—	1
Dukes	—	—	—	—	—	—
Essex	—	1	—	—	—	—
Franklin	—	—	—	1	—	—
Hampden	—	—	—	—	—	3
Hampshire	—	—	—	—	—	—
Middlesex	4	1	—	1	—	—
Nantucket	—	—	—	1	—	—
Norfolk	1	—	—	—	—	—
Plymouth	1	—	—	—	—	1
Worcester	1	—	—	—	—	—

SUPREME JUDICIAL COURT FOR THE COUNTY OF SUFFOLK

FROM SEPTEMBER 1, 1955 TO SEPTEMBER 1, 1956

Transferred to Superior Court	Prerogative Writs	Petitions for Admission to the Bar
29	69	810

Law Docket

Appeals from decision of Appellate Tax Board	7
Petitions for Admission to the Bar	810
Petitions for Writ of Certiorari	7
Petitions for Writ of Error	17
Petitions for Writ of Habeas Corpus	18
Petitions for Information	5
Petitions for Writ of Mandamus	24
Petitions for Writ of Prohibition	2
Petition for Writ of Protection	1
Petition for Discharge under G. L. c. 123, § 90	1
Petition for Discharge under G. L. c. 123, §§ 91 and 92	1
Petition for Stay of Execution	1
Petition for Copy of Record	1
Petition for leave to reproduce Transcript of Testimony	1
	896
Total Entries on Law Docket	*896*

Equity Docket	
Bills of Complaint	9
Bills in Equity	12
Bill of Review	1
Bill of Discovery	1
Petitions for Appeal	3
Petition for Appointment of Trustee	1
Petitions for Information	3
Petitions for Injunction	2
Petition for Quo Warranto	1
Petition to Suspend Decree	1
Petitions for Instructions	5
Petitions for Dissolution under G. L. c. 155, § 50A (about 2,216 corporations)	4
Petition for Dissolution brought by individuals	1
Petitions for Declaratory Judgment	5
Petitions for Stay of Proceedings	2
Petitions under G. L. c. 214, § 22	3
Petitions under G. L. c. 214, § 3, (11)	2
Petition under G. L. c. 215, § 23	1
Petitions for Declaratory Relief under G. L. c. 231A	2
	59
Total Entries on Equity Docket	59
Total Entries on Both Dockets	955

SUPERIOR COURT

For the table of criminal business, see p. 84. For the tables of civil business—entries, trials, verdicts, cases disposed of, etc., see tables 1 to 12 (pp. 85-100). These tables are for the year ending June 30, 1956. For Appellate Division for Criminal Sentences, see p. 76. We call attention to two new tables—3A as to juries and settlements and 5A as to non-triable docket.

REFERENCES TO AUDITORS AND MASTERS IN THE SUPERIOR COURT

CALENDAR YEAR 1955

County	*Auditor*	*Master*	*Cost*
Barnstable	13	7	$3,501.50
Berkshire	6	9	3,145.99
Bristol	11	43	12,028.00
Essex	19	21	11,181.32
Franklin	1	3	704.00
Hampden	16	13	6,779.25
Hampshire	2	5	1,717.00
Middlesex	42	32	14,632.25
Norfolk	84	14	12,432.50
Plymouth	7	21	5,697.50
Suffolk	262	56	38,716.07
Worcester	38	16	9,013.37
	501	240	$114,548.75

Two or more cases tried together are counted as one reference.

NOTE: In Barnstable, Berkshire and Suffolk Counties these figures apply to the Superior Court only. In other counties they include Supreme Judicial, Probate and Land Courts.

APPELLATE DIVISION, SUPERIOR COURT

FOR THE REVIEW OF SENTENCES TO THE STATE PRISON AND REFORMATORY FOR WOMEN

Appeals in Indictment Cases Under St. 1943, Ch. 558
July 1, 1955—June 30, 1956

Number of Appeals Pending June 30, 1955	24	Sentences Increased	0
Number of Appeals Filed	257	Appeals Dismissed	74
Sentences Modified	10	Appeals Withdrawn	42
		Pending June 30, 1956	155

The division, consisting of three justices, sat eight days.

Appeals where the sentence has been modified or increased by the Appellate Division from July 1, 1955 to June 30, 1956.

Offense	*Original Sentence*	*New Sentence*
Robbery, Armed	5-10 years	2½-10 years
B&E Night and Larceny	3-4 years	1 year House of Correction

Appeals where the sentence has been modified or increased by the Appellate Division from July 1, 1955 to June 30, 1956 and the defendant has appealed from more than one sentence.

Offense	*Original Sentence*	*New Sentence*
A. Robbery	5-7 years	M.C.I. Concord
Robbery	5-7 years conc.	M.C.I. Concord conc.
Robbery	5-7 years conc.	M.C.I. Concord conc.
Assault with Intent to Rob	5-7 years conc.	M.C.I. Concord conc.
Larceny of Auto	5-7 years conc.	M.C.I. Concord conc.
Carrying Revolver in Motor Vehicle	3-5 years conc.	M.C.I. Concord conc.
B. Robbery, Armed	5-7 years	3-5 years
Carrying a Weapon	2½-3 years conc.	Appeal Dismissed
C. Larceny	3-5 years	Appeal Dismissed
Larceny	3-5 years from and after	3-5 years conc.

THE CONCILIATION SYSTEM IN BERKSHIRE COUNTY UNDER THE NOTICE TO THE BAR DATED JANUARY 5, 1955, FROM NOVEMBER 1, 1955 TO NOVEMBER 1, 1956

In the report on this system last year (see 31st report, p. 80) the Berkshire Clerk of Courts expressed the opinion that "the whole program has been worthwhile, as one group of eight cases, which would have taken over a week to try at a cost to the county of $2,000 ±, were settled by reference to a referee."

The practice was established some years ago by the Berkshire bar because of the fact of the limited sittings of the court in the county, and the statutory priority of land damage cases which prevent the trial of other civil cases. After three years as a bar association experiment, it was established by order of the court. This year the clerk reports for the period from November 1, 1955 to November 1, 1956.

Number of cases referred		132
Rejection of conciliation		
By plaintiff	3	
By defendant	12	
By both	1	15
Order of reference vacated		1
Settled before reference or conference		21
Results of conference		
Settled	41	
Not settled	24	
Did not appear	1	66
Total amount paid referees		$992.00

"There are some cases still pending in which the report of the referee has not been filed, and also several referee's bills which have not been approved. However, the above figures include action on cases that were incomplete at the time of my previous report."

Pre-Trial Reports (See p. 102)

LAND COURT

This is a court of three judges, created in 1898, for the registration of title to land, and since then developed by additional extensions of jurisdiction both at law and in equity into the court in which almost all litigation regarding title to land takes place in addition to its original function of a court for the registration of title.

STATISTICS FROM JULY 1, 1955 TO JUNE 30, 1956

CASES ENTERED

Land Registration	840
Land Confirmation	7
Land Registration, Subsequent	948
Tax Lien	477
Miscellaneous	350
Equity	1,697
Total Cases Entered	4,319
Decree plans made	742
Subdivision plans made	911
Total plans made	1,653
Total appropriation	$286,405.00
Fees sent to State Treasurer	88,088.17
Income from Assurance Fund applicable to expenses	9,481.70
Total expenditures	275,851.69
Net cost to Commonwealth	178,281.82
Assurance Fund, June 30, 1956	370,863.27
Assessed value of land on petitions in registration and confirmation cases entered	1,961,700.77

CASES DISPOSED OF BY FINAL ORDER DECREE OR JUDGMENT BEFORE HEARING

Land Registration	787
Land Confirmation	4
Land Registration, Subsequent	948
Tax Lien	589
Equity and Miscellaneous	1,560
Total Cases Disposed of	3,888

PROBATE COURTS

There is a probate court in each county, with jurisdiction of wills, trusts, settlement of estates, guardianship, adoption, change of name, divorce and separate maintenance, and a variety of other matters. There are three judges in Suffolk and Middlesex, two in Essex, Worcester, Hampden, Norfolk and Bristol, one in each of the other counties.

The report prepared by the Administrative Committee of the Probate Courts for the year 1955 appears on page 101.

THE MUNICIPAL COURT OF THE CITY OF BOSTON

This court consists of a chief justice and eight associate justices, all full time judges. There are also six special justices. The tables showing the *details* of the civil business for the year 1955-56 will be found on pp. 83-85. The comparative table of civil business from 1913 to 1939 will be found in the 15th Report, p. 65. The condensed business and other information for 1955-56 appears below.

MUNICIPAL COURT OF THE CITY OF BOSTON

CIVIL ACTIONS (OTHER THAN SMALL CLAIMS CASES)

FOR THE YEAR ENDING JUNE 30, 1956

	Actions Entered	Removed	Per Cent of Entries	Actions Defaulted	Per Cent of Entries	Tried	Per Cent of Entries	Amount of Plaintiffs' Judgments	Average Amount of Plaintiffs' Judgments	Heard, Appellate Division	Per Cent of Trials	To Supreme Judicial Court from Appellate Division	To Supreme Judicial Court under Employment Security Law
Contract	13,200	338	2.6	7,760	58.8	878	6.6	$2,802,270.82	$282.20				
Tort	11,229	4,920	43.8	999	8.9	1,079	9.6	1,288,657.19	289.32				
Contract or Tort	407	52	12.8	49	12.0	43	10.6						
All Others	751			302	40.2	220	29.3	2,579.87	5.89			*	
Totals	25,587	5,310	20.7	9,110	35.6	2,220	8.7	$4,093,507.88	$276.17	23	1.0	4	1

FOR THE YEAR ENDING JUNE 30, 1955

Totals	22,266	3,558	15.9	8,695	39.1	2,113	9.5	$3,548,139.13	$275.73	24	1.1	12	0

TORTS

For Year Ending June 30, 1956

TORTS ENTERED		TORT REMOVALS		TORTS TRIED	
Motor Vehicle	9,569	Motor Vehicle, Pltf..	3,214	Motor Vehicle	917
Other Torts	1,660	Motor Vehicle, Def't.	1,630	Other Torts	162
		Other Torts	76		
Total	11,229	Total	4,920	Total	1,079

For Year Ending June 30, 1955

TORTS ENTERED		TORT REMOVALS		TORTS TRIED	
Motor Vehicle	7,385	Motor Vehicle, Pltf..	1,926	Motor Vehicle	927
Other Torts	1,305	Motor Vehicle, Def't.	1,110	Other Torts	136
		Other Torts	92		
Total	8,690	Total	3,128	Total	1,063

SMALL CLAIM DIVISION

	Summary for the Year Ending June 30, 1955			Summary for the Year Ending June 30, 1956		
	Contract	Tort	Total	Contract	Tort	Total
Actions Entered	1,686	233	1,919	1,417	221	1,638
Actions Settled	418	80	498	340	81	421
Counter-Claims or Set-Offs	7	5	12	4	1	5
Trials	236	116	352	211	113	324
Reserved	67	54	121	71	60	131
Finding for Plaintiff	178	87	265	142	79	221
Finding for Defendant	58	29	87	69	34	103
Judgments by Default	847	4	851	691	15	706
Judgments by Non-Suit	20	6	26	17	4	21
Amount of Plaintiff's Judgments	$38,142.76	$3,737.01	$41,879.77	$31,245.70	$3,801.11	$35,046.81
Transferred to Regular Civil Docket	8	2	10	5	2	7
Removed to Superior Court	6	4	10	1	5	6
Executions	299	74	373	263	62	325
Amount of Plaintiff's Claims	$60,938.83	$11,854.60	$72,793.43	$53,106.35	$10,998.50	$64,104.85
Notices Returned Unclaimed	505	17	522	403	0	403

EXECUTION DEPARTMENT

	For the Year Ending June 30, 1956	*For the Year Ending June 30, 1955*
Paid Orders:		
Orders of Notice	1100	920
Certificates	716	748
Special Precepts	226	160
Supersedeas	6	6
Comm.—Depositions	16	15
Transcripts	45	35
Opinions	9	8
Orders of Sale	11	11
Copies	96	76
Miscellaneous	4	3
	2229	1982

SUPPLEMENTARY PROCESS:		
Entries	2656	3515
Summons	4202	5009
Capias	2591	3301
No. to Show Cause	1362	1671
	8155	9981
SUMMARY PROCESS (EJECTMENT):		
Entries	514	528

ANNUAL REPORT
MUNICIPAL COURT OF THE CITY OF BOSTON
FOR CRIMINAL BUSINESS

JULY 1, 1955 — JUNE 30, 1956

TOTAL BUSINESS OF THE COURT:

1. Automobile violations	816
2. Parking violations	35,156
3. Domestic relations	303
4. Drunkenness in Court	6,217
5. Drunkenness released by Probation Officer	5,834
6. Other criminal cases	3,638
7. Inquests entered	9
8. Search warrants issued	95
9. GRAND TOTAL BUSINESS	52,068

DISPOSITIONS:

1. Pleas of guilty	28,955
2. Pleas of not guilty	2,047
3. Placed on file, before and after trial, dismissed before and after trial, etc.	15,038
4. Defendants not arrested, pending for trial	5,479
5. Defendants acquitted	695
6. Defendants bound over to Grand Jury	508
7. Defendants placed on probation (not including surrenders)	3,062
8. Defendants fined	24,319
9. Imprisonments	2,246
10. Fines appealed	87
11. Imprisonment appealed	311
12. Defendants pending for sentence	38

NON-CRIMINAL PARKING LAW:

1. Parking tags turned in by violators	373,824

FINANCES:

Moneys received from parking tag office	$368,696.82
Moneys received from Court fines, forfeitures, fees	85,368.60
TOTAL moneys received and turned over	$454,065.42
Moneys received as bail	$112,213.00
TOTAL moneys handled by the Court	$566,278.42

THE BOSTON JUVENILE COURT

The Boston Juvenile Court, created in 1906, is a separate court with jurisdiction in juvenile cases in the central district of Boston. It has one judge and two special justices.

BOSTON JUVENILE COURT STATISTICS

OCTOBER 1, 1955 — SEPTEMBER 30, 1956

COMPLAINTS:

	Boys	*Girls*	*Totals*
Juvenile Criminal	2	0	2
Delinquent	568	440	1,008
Wayward	6	2	8
Totals	576	442	1,018

	Men	*Women*	*Totals*
Adults	22	30	52

	No. of Complaints	*No. of Children Represented*
Children in Need of Care and Protection	16	42

TOTAL NUMBER OF ALL COMPLAINTS:

Juvenile	1,018
Adult	52
Children in Need of Care and Protection	16
Total	1,086

* * * * * *

Active as of September 30, 1956:

	Individuals		*Complaints*	
JUVENILES:				
Boys	231		247	
Girls	189		193	
Totals		420		440
ADULTS:				
Men	22		22	
Women	39		40	
Totals		61		62
CHILDREN IN NEED OF CARE AND PROTECTION		96		36
TOTALS		577		538

* * * * * *

NUMBER OF CASES:		
Juveniles	420	
Adults	61	
Children in Need of Care and Protection	36	
	517	
OUT-OF-STATE CASES UNDER SUPERVISION		0

CLERK'S OFFICE, MUNICIPAL COURT OF THE CITY OF BOSTON FOR CIVIL BUSINESS

SUMMARY FOR THE YEAR ENDING JUNE 30, 1956

	Actions Entered—Total	Actions Removed to Superior Civil Court—Total	Actions Defaulted	Ints Filed		Marked for		Trial List				Findings		Appellate Division											
				To Plaintiff	To Defendant	Motion List	Trial List	Non-Suits	Defaults	Tried	Reserved	For Plaintiff	For Defendant	Requests for Report	Reports Allowed	Reports Dis-Allowed	Petitions to Establish	Reports Proved	Cases Heard	Cases Decided	Affirmed	Reversed	Modified	Entire Re-Trial Ordered	Partial Re-Trial Ordered
Contract	13,200	338	7,760	1,046	2,625	—	—	—	—	878	329	793	113	22	7	1	2	—	14	12	6	3	1	2	—
Tort	11,229	4,920	999	7,535	6,379	—	—	—	—	1,079	576	812	290	13	9	1	—	—	7	6	6	—	—	—	—
Contract or Tort	407	52	49	240	42	—	—	—	—	43	40	—	26	4	1	—	—	—	1	1	—	1	—	—	—
All Others	751	—	302	7	8	—	—	—	—	220	23	177	41	3	1	—	1	—	1	1	1	—	—	—	—
TOTALS	25,587	5,310	9,110	8,828	9,054	5,712	11,898	140	740	2,220	968	1,782	470	42	18	2	3	—	23	20	13	4	1	2	—

CLERK'S OFFICE, MUNICIPAL COURT OF THE CITY OF BOSTON FOR CIVIL BUSINESS

SUMMARY FOR THE YEAR ENDING JUNE 30, 1956—*Continued*

	Appellate Division—*Con.*							Defendants' Judgments						Plaintiffs' Judgments								
	Motions	Cases Consolidated Under G.L. c. 223, s. 2, as Amended	Appeals to Supreme Judicial Court	Appeals to Supreme Judicial Court—Perfected	Appeals to Supreme Judicial Court—Affirmed	Appeals to Supreme Judicial Court—Reversed	Appeals to Superior Civil Court	Entered by Non-Suit	Entered by Trial—Open Court	Entered by Trial—After Reservation	Entered by Agreement	Total Defendants' Judgments	Neither Party by Agreement	Entered by Default	Entered by Trial—Open Court	Entered by Trial—After Reservation	Entered by Agreement	Total Plaintiffs' Judgments	Amount of Plaintiffs' Judgments $	Average Amount of Plaintiffs' Judgments $	Executions Issued	Actions Transferred under Chapter 309, Acts 1943, as Amended	Transferred to Federal Court
Contract	—	15	4	3	4	1	—	44	37	76	12	169	193	8,292	512	281	845	9,930	2,802,270.82	282.20	9,428	—	—
Tort	1	56	—	—	—	—	—	139	34	256	10	439	319	296	469	343	3,346	4,454	1,288,657.19	289.32	943	—	—
Contract or Tort	—	4	—	—	—	—	—	6	3	23	1	33	14	—	—	—	—	—	—	—	—	—	—
All Others	—	—	—	1	—	—	—	17	30	11	—	58	1	243	167	10	18	438	2,579.87	5.89	310	—	—
TOTALS	1	75	4	4	4	1	3	206	104	366	23	699	527	8,831	1,148	634	4,209	14,822	4,093,507.88	276.17	10,681	203	6

Appeals to Supreme Judicial Court under Employment Security Law — Appeals — Filed 1.

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CRIMINAL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1956

Counties.	CRIMINAL CASES																
	Number remaining at first of year.	Number of Indictments returned.	Number of appeal cases entered.	Appeals withdrawn before sitting following Entry.	Appeals withdrawn during or after next sitting, under St. 1937, c. 311.	Number of actions on bail bonds for recognizances entered.	Number disposed of in previous years brought forward for redisposition.	Indictments waived.	Number of complaints filed after waiver of indictment.	Number disposed of during year.	Number remaining at end of year.	Number tried during year by Superior Court Justices.	Number tried by District Court Justices.	Number awaiting trial at end of year.	Number of days during which a Superior Court judge has sat for trials, hearings or dispositions.	Days District Court judges were called in to sit in Superior Court.	Appeals withdrawn during sitting.
Barnstable . . .	58	131	102	6	4	1	0	0	0	184	82	9	30	49	15½	19	16
Berkshire	115	61	91	15	22	0	0	97	0	221	102	4	14	49	16	9	4
Bristol	177	371	481	52	17	0	1	101	0	834	161	43	125	73	42	53	67
Dukes	2	16	10	6	0	0	0	0	0	19	3	3	0	3	5	0	0
Essex	48	321	476	126	20	0	30	181	0	836	56	76	0	46	65	0	18
Franklin	34	14	31	6	5	0	0	5	0	42	23	3	6	22	6	4	8
Hampden . . .	144	143	191	21	32	0	0	83	0	329	174	35	17	148	38	10	5
Hampshire . . .	101	56	60	11	14	0	0	29	0	102	119	8	10	21	8	10	0
Middlesex . . .	623	975	1,015	14	158	1	23	34	0	2,648	579	248	239	519	195	108	58
Nantucket . . .	1	1	4	3	0	0	0	0	0	2	1	2	0	1	6	0	0
Norfolk	333	434	498	39	16	0	128	46	0	930	379	73	120	6	51	56	75
Plymouth . . .	135	361	324	42	14	0	115	56	0	795	96	60	93	0	79	45	44
Suffolk	707	2,072	2,093	125	54	28	662	29	0	4,231	1,181	459	289	969	508	167	0
Worcester . . .	331	452	350	80	117	1	35	183	19	960	194	226	100	188	65	77	20
Total . . .	2,809	5,408	5,726	546	473	31	994	844	19	12,133	3,150	1,249	1,043	2,094	1099½	558	315

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1956

MADE BY THE CLERKS OF COURT TO THE JUDICIAL COUNCIL IN COMPLIANCE WITH ST. 1936, C. 31, § 3

COUNTY	CIVIL CASES											
	Table 1 — NUMBER UNDISPOSED OF AT BEGINNING OF YEAR											
	LAW											
	JURY CASES					NON-JURY						
	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Equity	Divorce and Nullity
Barnstable	63	124	144	69	1	3	130	9	11	12	191	0
Berkshire	73	129	249	87	13	0	53	18	6	5	192	1
Bristol	56	400	1,619	455	11	6	152	36	11	32	490	0
Dukes	0	5	3	1	0	0	0	0	0	0	4	0
Essex	109	862	2,078	1,061	52	1	178	51	23	22	575	0
Franklin	22	29	131	20	0	0	13	0	2	3	97	0
Hampden	131	543	2 486	632	13	10	226	62	30	33	0	0
Hampshire	21	39	172	37	13	0	23	4	7	23	104	101
Middlesex	272	1,396	7,228	2,696	33	7	504	185	113	123	1,045	2
Nantucket	0	1	14	3	2	0	2	0	1	1	0	0
Norfolk	119	493	1,443	451	23	9	162	103	43	56	291	0
Plymouth	57	224	726	248	2	7	111	20	11	25	578	0
Suffolk	231	1,756	11,605	5,190	1,528	40	762	732	168	640	2,657	4
Worcester	264	905	3,755	1,295	15	10	327	74	25	87	0	0
Total	1,418	6,976	32,253	12,245	1,706	93	2,643	1,294	451	1,062	6,234	108
Combined Totals	54,598					5,543					6,234	108
Total	66,483											

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1956—*Continued*

CIVIL CASES

Table 2 — NUMBER OF NEW CASES ENTERED DURING THE YEAR

COUNTY	ORIGINAL WRITS					REMOVALS FROM DISTRICT COURTS									
						BY PLAINTIFF					BY DEFENDANT				
	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Land Takings	Contracts	Motor Torts	Other Torts	All Others
Barnstable	45	95	0	36	5	0	0	48	0	0	0	27	42	2	0
Berkshire	102	56	0	51	3	0	0	121	1	0	0	28	47	9	0
Bristol	70	117	2	145	19	0	0	380	0	0	0	88	605	27	9
Dukes	6	4	0	2	0	0	0	0	0	0	0	0	4	0	0
Essex	78	347	10	385	24	0	2/ 9 transf	386/ 61 transf	2	2	0	197	990	123	0
Franklin	0	20	0	9	0	0	0	79	0	0	0	4	19	0	0
Hampden	78	185	1	194	26	0	0	571	0	0	0	77	747	62	0
Hampshire	28	20	0	13	5	0	0	46	2	0	0	6	84	4	1
Middlesex	322	599	19	765	155	0	1	1,769	21	3	0	239	1,596	118	9
Nantucket	0	0	0	3	3	0	0	0	0	0	0	0	6	0	0
Norfolk	119	219	11	202	43	0	0	549	0	0	0	128	475	35	12
Plymouth	33	144/ 4	1/ 7	90	22	0	0	201	0	0	0	56	199	26	2
Suffolk	277	1,164	8	1,956	327	0	0	3,411	0	0	0	399	2,208	164	9
Worcester	236	351	1	443	73	0	1	1,726	5	0	0	112	449	24	2
Total	1,394	3,321	53	4,294	705	0	4/ 9 transf	9,287/ 61 transf	31	5	0	1,361	7,471	594	44
Combined Totals	9,767/11					9,327/70 transf					9,470				
Total	31,586/82														

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1956—*Continued*

County	CIVIL CASES											
	Table 2 — *Continued*					Number of New Cases Entered During the Year						
	Removals from District Courts											
	By Both					By Court Order					Equity	Divorce and Nullity
	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Land Takings	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	0	0	1	0	1	0	0	7	0	0	124	0
Berkshire	0	0	0	0	0	0	0	5	0	0	126	1
Bristol	0	0	0	0	0	0	1	47	1	0	0	0
Dukes	0	0	0	0	0	0	0	0	0	0	4	0
Essex	0	0	0	0	0	0	0	0	0	0	351	1
Franklin	0	0	0	0	0	0	0	3	0	0	21	0
Hampden	0	0	0	0	0	0	3	33	0	0	0	
Hampshire	0	0	0	0	0	0	0	1	0	0	31	29
Middlesex	0	0	0	0	0	0	12	186	16	1	578	3
Nantucket	0	0	0	0	0	0	0	0	0	0	0	0
Norfolk	0	0	0	0	0	0	0	39	2	0	238	0
Plymouth	0	0	2	0	0	0	1	25	0	0	284/1	0
Suffolk	0	0	0	0	0	0	20	313	12	1	432	2
Worcester	0	0	0	0	0	0	2	62	0	0	0	0
Total	0	0	3	0	1	0	39	721	31	2	2,189/1	36
Combined Totals	4					793					2,225/1	
Total	31,586/82											

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1956—*Continued*

County	CIVIL CASES											
	Table 3 — Number of Trials by Superior Court Justices — Cases Tried											
	Jury					Non-Jury					Equity	Divorce and Nullity
	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Land Takings	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	2	3	17	3	0	4	4	1	2	1	7	0
Berkshire	9	8	6	2	0	4	3	1	0	0	7	2
Bristol	12	27	133	28	0	3	4	7	1	0	17	0
Dukes	0	0	0	0	0	0	0	0	0	0	0	0
Essex	3	27	186	55	0	4	24	3	1	14	37	0
Franklin	1	1	11	3	0	0	0	0	0	0	0	0
Hampden	6	22	96	23	2	0	9	11	3	0	0	0
Hampshire	2	1	25	2	2	0	0	0	0	0	0	0
Middlesex	17	35	199	73	1	1	39	44	9	7	91	0
Nantucket	0	0	1	1	0	0	0	0	0	3	0	0
Norfolk	14	25	131	21	1	21	13	11	1	0	7	0
Plymouth	7	18	33/+2 transf.	19	0	8	8	3	0	6	11	0
Suffolk	8	70	283	128	3	42	75	125	48	60	427	2
Worcester*	26	18	84	18	0	22	15	8	5	7	0	0
Total	107	255	1,205/+2 transf.	376	9	109	194	214	70	98	604	4
	1,952/+ 2 transf.					685					604	4
Total Trials	3,245/+ 2 transf.											

*Fitchburg 26 — Worcester 177.

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1956—*Continued*

CIVIL CASES

Table 3A NUMBER OF JURIES IMPANNELED, CASES INVOLVED, SETTLEMENTS, ETC.

	JURY CASES									NON-JURY CASES								
	Total trials of all classes.	Number juries Impaneled.	Number Cases Involved.	Trials ended by verdicts or finding.	Trials ended by settlement	Trials ended by Mistrial.	Trials ended by disagreement.	Trials ended Otherwise.	Cases settled after trial Began.	Total Trials of all Classes.	Number Juries Impaneled.	Number Cases Involved.	Trials ended by verdicts or finding.	Trials ended by Settlement.	Trials ended by Mistrial.	Trials ended by Disagreement.	Trials ended Otherwise.	Cases Settled After Trial Began.
Barnstable	17	17	25	13	1	0	0	0	11	10	0	12	10	0	0	0	0	2
Berkshire	25	25	31	23	2	0	0	0	4	8	0	8	7	0	1	0	0	0
Bristol	87	127	203	84	116	2	1	0	116	15	0	15	15	0	0	0	0	0
Dukes	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Essex	186	186	271	121	59	0	1	5	95	43	0	46	35	4	1	0	3	4
Franklin	13	24	41	13	11	0	0	0	25	0	0	0	0	0	0	0	0	0
Hampden	97	97	149	69	31	2	0	0	48	23	0	26	23	3	0	0	0	0
Hampshire	32	34	52	32	13	0	0	0	20	18	0	0	18	0	0	0	0	0
Middlesex	263	354	482	249	91	5	4	5	129	113	0	0	106	18	0	0	7	18
Nantucket	2	2	2	2	0	0	0	0	0	5	0	0	3	1	0	0	1	0
Norfolk	192	93	192	112	66	2	1	11	62	53	0	53	53	0	0	0	0	0
Plymouth	77 /2 transf.	54	77 /2 transf.	36	0	1	0	11	29 /2 transf.	25	0	0	23	0	1	0	1	0
Suffolk	–	684	839	492	208	11	0	44	301	–	0	0	350	11	0	0	0	11
Worcester	347	250	360	103	142	4	0	1	193	70	0	78	56	10	0	0	3	10
Total	1,338 /2 transf.	1,947	2,724 /2 transf.	1,349	740	27	7	77	1,033 /2 transf.	383	0	238	699	47	3	0	15	35

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1956—*Continued*

CIVIL CASES

Table 4 — Number and Amounts of Jury Verdicts — For Plaintiff

County	Less than $200					$200 to $500					$500 to $1,000					$1,000 to $2,000					$2,000 to $3,000					$3,000 to $4,000				
	Land Takings	Contract	Motor Torts	Other Torts	All Others	Land Takings	Contract	Motor Torts	Other Torts	All Others	Land Takings,	Contract	Motor Torts	Other Torts	All Others	Land Takings	Contract	Motor Torts	Other Torts	All Others	Land Takings	Contract	Motor Torts	Other Torts	All Others	Land Takings	Contracts	Motor Torts	Other Torts	All Others
Barnstable	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1	0	0	0	0
Berkshire	0	0	1	1	0	0	2	1	1	0	1	1	0	1	0	1	1	3	0	0	0	1	0	0	0	0	0	1	0	0
Bristol	0	0	2	0	0	1	5	2	0	0	1	0	5	1	0	1	1	7	3	0	0	0	2	3	0	0	0	0	1	0
Dukes	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Essex	0	1	8	0	0	0	3	8	0	0	0	1	9	3	0	0	2	16	5	0	0	1	1	3	0	0	0	4	1	0
Franklin	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	0	1	0	0	0	0	0	1	0
Hampden	0	0	15	0	0	0	0	13	2	0	0	1	9	4	0	1	2	10	1	1	1	0	7	1	0	0	0	4	2	0
Hampshire	0	0	6	0	0	0	0	4	0	0	0	0	6	0	0	0	0	4	0	0	1	0	2	0	0	0	0	1	0	1
Middlesex	0	2	3	1	0	2	2	15	4	0	0	3	20	8	0	0	5	16	5	0	1	4	3	3	0	0	2	5	2	0
Nantucket	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1	0
Norfolk	0	1	11	0	0	2	2	4	0	0	2	4	3	1	0	1	3	3	0	0	0	2	0	0	0	1	1	0	1	0
Plymouth	1	0	0	0	0	1	2	0	0	0	0	3	2	0	0	0	0	1	2	0	0	1	0	0	0	0	0	2	0	0
Suffolk	0	2	7	3	0	1	4	19	9	0	1	9	28	7	0	1	7	29	14	0	0	3	10	12	1	1	3	8	2	0
Worcester*	0	0	0	0	0	0	0	4	0	0	3	3	9	5	0	4	2	10	2	0	3	1	2	0	0	0	0	2	0	0
Total	1	6	53	6	0	7	21	70	16	0	8	25	92	30	0	10	23	100	33	1	6	14	28	22	1	3	6	27	11	1
	66					114					155					167					71					48				
	2,383																													

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1956—*Continued*

CIVIL CASES

Table 4 — Continued

NUMBER AND AMOUNTS OF JURY VERDICTS

County	For Plaintiff															For Defendant									
	$4,000 to $5,000					$5,000 to $10,000					Over $10,000					Ordered					Not Ordered				
	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Land Takings	Contracts	Motor Torts	Other Torts	All Others
Barnstable	0	0	0	0	0	0	0	0	1	0	1	0	1	0	0	0	0	0	0	0	0	1	4	1	0
Berkshire	1	0	0	1	0	1	0	3	0	0	4	0	2	0	0	0	2	0	0	0	0	1	1	2	0
Bristol	0	1	0	0	0	2	7	0	0	0	3	0	0	0	0	0	1	3	3	0	0	4	21	4	0
Dukes	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Essex	1	0	5	1	0	1	1	4	1	0	1	0	4	1	0	0	5	16	9	0	0	2	45	13	0
Franklin	0	0	0	0	0	0	0	2	0	0	0	0	1	0	0	0	0	0	0	0	0	0	5	2	0
Hampden	1	2	0	2	0	0	0	6	0	0	3	0	2	1	0	0	3	6	8	0	0	12	29	0	1
Hampshire	0	0	1	0	0	0	0	0	0	0	1	0	1	0	1	0	1	3	3	2	0	0	15	1	0
Middlesex	0	0	0	1	0	3	1	12	5	0	11	1	6	2	0	0	5	15	19	0	0	9	104	23	1
Nantucket	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Norfolk	0	0	3	0	0	2	0	2	1	0	3	0	3	0	0	0	0	0	5	0	0	6	38	6	0
Plymouth	0	0	0	0	0	0	2	1	0	0	2	1	1	0	0	1	0	1	0	0	0	1	8	3	0
Suffolk	0	1	9	3	0	2	6	23	5	1	2	1	17	5	0	0	14	9	35	0	0	20	124	33	1
Worcester	0	1	3	0	0	7	0	4	0	0	2	1	6	1	0	6	7	16	4	0	1	3	28	6	0
Total	3	5	21	8	0	18	17	57	13	1	33	4	44	10	1	7	38	19	86	2	1	59	422	94	3
	37					106					92					152					579				

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1956—*Continued*

CIVIL CASES

Table 5 NUMBER AND AMOUNTS OF NON-JURY FINDINGS

FINDINGS FOR PLAINTIFF

County	Less than $200					$200 to $500					$500 to $1,000					$1,000 to $2,000					$2,000 to $3,000				
	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Land Takings	Contracts	Motor Torts	Other Torts	All Others
Barnstable	0	0	0	0	0	0	0	3	0	0	0	1	0	0	0	0	1	3	0	0	0	0	0	0	0
Berkshire	0	0	1	0	0	0	0	3	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0
Bristol	0	1	1	0	0	0	0	1	0	0	1	2	1	0	0	1	0	1	0	0	0	0	0	0	0
Dukes	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Essex	0	3	0	0	2	0	2	0	0	0	0	0	0	0	0	0	5	0	0	0	0	1	0	0	0
Franklin	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Hampden	0	2	1	0	0	0	2	3	0	0	0	0	2	0	0	0	1	0	2	0	0	1	0	0	0
Hampshire	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Middlesex	0	2	8	2	1	0	4	14	0	0	0	5	3	1	0	0	7	2	1	0	0	1	0	0	0
Nantucket	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Norfolk	0	0	1	0	0	0	6	5	0	0	0	3	1	0	0	0	0	1	1	0	3	0	0	0	0
Plymouth	1	0	0	0	0	2	2	0	0	0	0	0	1	0	0	0	1	0	0	0	0	1	0	0	0
Suffolk	0	5	14	6	6	0	11	25	8	8	0	6	12	4	9	2	10	7	4	4	2	0	1	2	2
Worcester	0	1	1	0	1	4	2	2	0	0	0	4	0	0	0	0	1	0	0	0	2	2	0	1	1
Total	1	14	27	9	10	6	29	55	8	8	1	21	20	5	9	3	26	11	8	4	8	6	1	3	3
	61					101					56					52					21				

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1956—*Continued*

CIVIL CASES

Table 5 — Continued NUMBER AND AMOUNTS OF NON-JURY FINDINGS

County	Findings for Plaintiff																				Findings for Defendant				
	$3,000 to $4,000					$4,000 to $5,000					$5,000 to $10,000					Over $10,000									
	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Land Takings	Contracts	Motor Torts	Other Torts	All Others
Barnstable	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1	0	1	0	0	0	1	0	2	1
Berkshire	0	0	0	0	0	1	1	0	0	0	2	1	0	0	0	0	0	0	0	0	0	0	0	0	0
Bristol	0	1	3	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0
Dukes	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Essex	0	0	1	0	0	1	0	0	0	0	1	0	0	0	0	2	0	0	0	0	0	5	2	1	9
Franklin	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Hampden	0	1	0	0	0	0	0	2	1	0	0	0	2	0	0	0	0	0	0	0	0	2	1	0	0
Hampshire	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Middlesex	0	2	0	1	0	0	0	0	0	0	0	0	1	1	0	1	1	1	0	0	0	17	15	3	6
Nantucket	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0
Norfolk	3	0	0	0	0	0	1	0	0	0	5	1	1	0	0	11	1	0	0	0	0	0	1	0	0
Plymouth	0	0	0	0	1	1	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	2	2	0	0
Suffolk	0	1	4	1	1	2	2	1	0	0	6	4	0	6	1	30	3	0	2	4	0	33	61	15	25
Worcester	2	0	0	0	0	1	0	0	0	0	4	0	0	0	0	8	0	0	0	0	1	4	5	4	5
Total	5	5	8	2	2	8	4	3	1	0	18	6	4	7	1	55	5	2	3	4	1	64	87	26	46
	22					16					36					69					224				

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1956—*Continued*

Table 5A — THE NON-TRIABLE DOCKET

County	Transferred to Non-Triable Docket					Remaining Non-Triable Docket July 1, 1956					Remaining Triable Docket July 1, 1956				
	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Land Takings	Contract	Motor Torts	Other Torts	All Others	Land Takings	Contract	Motor Torts	Other Torts	All Others
Barnstable	19	77	18	16	4	19	77	18	16	4	54	143	129	65	10
Berkshire	9	40	29	24	4	9	40	29	24	4	123	121	204	95	5
Bristol	10	134	213	41	9	10	134	213	41	9	60	403	1,555	390	21
Dukes	0	0	0	0	0	0	0	0	0	0	5	9	1	2	0
Essex	13	318	419	139	36	13	318	419	139	36	102	662	1,902	851	11
Franklin	13	18	40	8	2	13	18	40	8	2	24	22	80	10	3
Hampden	32	136	135	64	7	32	136	135	64	7	141	440	2,211	473	40
Hampshire	15	35	68	22	15	15	35	68	22	15	23	26	94	17	6
Middlesex	17	312	877	267	29	17	312	877	267	29	391	1,400	6,061	2,037	77
Nantucket	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Norfolk	6	233	323	127	25	6	233	323	127	25	149	530	1,401	409	55
Plymouth	8	157	152	65	17	6	99	110	38	9	52	290	657	232	9
Suffolk	18	943	2,711	1,516	203	18	943	2,711	1,516	203	394	1,815	9,993	4,089	1,925
Worcester	19	323	521	139	17	19	323	521	139	17	324	908	3,805	1,099	67
Total	179	2,726	5,506	2,428	368	177	2,668	5,464	2,401	360	1,842	6,769	28,093	9,769	2,229
	11,207					11,070					48,702				
	70,979														

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1956—*Continued*

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1956—*Continued*

CIVIL CASES

Table 6 — FINALLY DISPOSED OF

COUNTY	JURY										NON-JURY										Equity	Div. and Nul.
	ON AUDITOR'S REPORT					OTHERWISE					ON AUDITOR'S REPORT					OTHERWISE						
	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Land Takings	Contracts	Motor Torts	Other Torts	All Torts		
Barnstable	0	2	0	0	0	34	80	100	31	0	0	0	1	0	1	4	75	3	6	4	147	0
Berkshire	0	6	0	0	1	43	73	195	28	6	0	2	0	0	0	0	33	12	7	5	131	0
Bristol	0	0	0	0	0	53	185	922	180	6	0	0	1	0	0	6	82	30	18	36	238	0
Dukes	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	4	3	0	0	2	0
Essex	0	23	15	18	0	65	405	1,605	515	5	0	5	0	1	0	2	101	78	11	29	390	1
Franklin	1	0	0	0	0	16	18	112	11	0	0	0	0	0	0	0	8	0	2	1	53	0
Hampden	0	0	0	0	0	55	262	1,398	301	7	0	0	0	0	0	4	110	21	9	18	0	0
Hampshire	0	0	0	0	0	7	17	136	19	5	0	0	0	0	0	0	8	3	0	9	52	56
Middlesex	0	7	1	0	0	166	579	3,633	1,265	9	0	4	0	0	0	14	253	109	50	138	482	3
Nantucket	0	0	0	0	0	0	0	5	2	0	0	0	0	0	0	0	0	0	1	2	0	0
Norfolk	4	3	7	1	0	84	207	851	186	8	0	0	1	1	0	2	35	39	9	39	124	0
Plymouth	0	3	2	0	0	25	93	395	98	2	0	0	0	0	0	14	54	12	4	31	355	0
Suffolk	0	7	4	1	0	86	1,022	5,216	1,769	119	0	1	0	0	0	50	555	343	145	258	1,328	3
Worcester	0	24	175	6	0	137	329	2,306	537	4	0	8	1	4	0	36	137	47	21	47	0	0
Totals	5	75	204	26	1	771	3,270	16,874	4,942	171	0	20	4	6	1	133	1,455	700	283	617	3,302	63
Totals	311					26,028					31					3,188					3,302	63
Total	32,923																					

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1956—*Continued*

County	CIVIL CASES																
	Table 7 — Cases Triable i.e. at Issue and Awaiting Trial and Not Marked																
	Jury					Non-Jury					Triable but Enjoined					Equity	Divorce and Nullity
	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Land Takings	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	42	64	80	54	1	0	35	7	3	1	0	0	0	0	0	34	0
Berkshire	112	95	188	80	0	0	11	6	9	1	0	0	0	0	0	31	0
Bristol	50	299	1,470	355	8	7	87	26	25	6	0	2	0	1	1	128	0
Dukes	5	9	1	2	0	0	0	0	0	0	0	0	0	0	0	3	0
Essex	101	589	1,886	842	2	1	73	16	9	9	0	0	0	0	0	79	0
Franklin	22	6	78	8	0	0	10	0	1	1	0	0	0	0	0	12	0
Hampden	169	392	2,272	521	17	4	184	74	16	30	0	0	0	0	0	0	0
Hampshire	23	18	93	12	2	0	8	1	5	4	0	0	0	0	0	20	27
Middlesex	387	1,117	6,012	1,951	28	4	283	49	86	49	0	2	48	44	0	366	0
Nantucket	0	0	9	4	4	0	0	0	0	0	0	0	0	0	0	0	0
Norfolk	97	367	1,297	342	20	2	4	6	20	2	0	0	0	1	0	215	0
Plymouth	50	44	537	202	2	0	36	0	6	5	0	0	1	0	0	77	0
Suffolk	266	1,763	9,304	4,054	259	6	753	429	153	271	0	0	0	0	0	739	1
Worcester	314	745	3,731	1,073	9	10	163	72	24	58	0	0	2	2	0	0	0
Totals	1,638	5,508	26,958	9,500	352	34	1,647	686	357	437	0	4	51	48	1	1,704	28
Totals	43,956					3,161					104					1,704	28
Total	48,953																

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1956—*Continued*

County	CIVIL CASES											
	Table 8 Cases Remaining Undisposed of Including Cases Marked Inactive or on Non-triable Dist. (see Table 5A)											
	Jury					Non-Jury					Equity	Divorce and Nullity
	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Land Takings	Contract	Motor Torts	Other Torts	All Others		
Barnstable	72	116	133	71	1	1	104	14	10	13	167	0
Berkshire	132	120	222	109	7	0	42	11	10	2	187	2
Bristol	63	388	1,734	399	13	7	149	34	32	17	466	0
Dukes	5	10	1	3	0	0	0	0	0	0	4	0
Essex	119	822	2,416	1,019	3	2	239	62	35	63	536	0
Franklin	37	21	120	17	0	0	19	0	1	5	65	0
Hampden	153	465	2,408	580	6	7	197	72	29	39	0	0
Hampshire	42	40	178	37	10	0	23	1	7	18	83	74
Middlesex	417	1,357	7,140	2,302	33	10	510	132	120	122	1,141	2
Nantucket	0	0	9	4	4	0	0	0	0	0	0	0
Norfolk	145	533	1,615	478	27	10	230	109	58	53	406	0
Plymouth	58	267	755	256	3	0	122	12	14	15	527	0
Suffolk	406	2,060	12,118	5,422	1,461	6	698	586	183	667	2,671	3
Worcester	331	987	4,235	1,202	12	12	244	90	36	72	0	0
Total	1,980	7,186	33,084	11,899	1,580	55	2,577	1,123	535	1,086	6,343	81
Totals	55,729					5,376					6,343	81
Total	67,529											

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1956—*Continued*

County	CIVIL CASES											
	Table 9 — Cases Marked Inactive in Previous Years											
	JURY					NON-JURY					Equity	Divorce and Nullity
	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Land Takings	Contract	Motor Torts	Other Torts	All Others		
Barnstable	0	0	0	0	0	0	0	0	0	0	0	0
Berkshire	0	0	0	0	0	0	0	0	0	0	0	0
Bristol	0	4	8	4	1	1	3	2	0	0	2	0
Dukes	0	2	0	2	0	0	2	0	0	0	1	0
Essex	0	0	0	0	0	0	0	0	0	0	0	0
Franklin	0	0	0	0	0	0	0	0	0	0	0	0
Hampden	10	107	235	85	11	3	57	9	11	13	0	0
Hampshire	1	1	1	0	0	0	0	0	0	0	2	0
Middlesex	0	3	19	3	0	0	0	0	0	1	98	0
Nantucket	0	1	4	1	0	0	2	0	0	0	0	0
Norfolk	0	0	4	1	0	0	0	3	0	0	0	0
Plymouth	0	0	1	1	1	0	2	1	0	1	0	0
Suffolk	43	6	174	85	26	1	7	21	0	12	16	0
Worcester	18	80	216	98	9	0	43	25	7	21	0	0
Total	72	204	662	280	48	5	116	61	18	48	119	0
Combined Totals	1,266					248					119	0
Total	1,266											

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1956—*Continued*

County	CIVIL CASES											
	Table 10 — Cases Marked Inactive During the Year											
	JURY					NON-JURY					Equity	Divorce and Nullity
	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Land Takings	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	2	9	2	4	0	0	19	2	0	3	28	0
Berkshire	3	10	5	5	0	0	8	2	0	0	29	0
Bristol	2	43	93	22	5	0	33	4	2	4	52	0
Dukes	0	1	0	1	0	0	0	0	0	0	1	0
Essex	2	55	57	37	4	3	31	9	0	0	64	0
Franklin	1	2	16	2	0	0	2	0	0	0	14	0
Hampden	3	35	18	33	0	0	23	7	7	3	0	0
Hampshire	5	5	18	3	4	0	4	0	1	3	9	12
Middlesex	10	82	470	137	2	4	68	55	17	14	175	0
Nantucket	0	0	0	0	0	0	0	0	0	0	0	0
Norfolk	0	38	30	14	1	0	34	16	6	5	18	0
Plymouth	2	30	22	11	0	0	13	2	2	3	99	0
Suffolk	12	177	841	379	58	0	164	147	47	65	444	1
Worcester	10	30	87	33	0	0	32	6	5	6	0	0
Total	52	526	1,659	681	74	7	431	250	87	106	933	13
Totals	2,992					881					933	13
Total	4,819											

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1956—*Continued*

CIVIL CASES

Table 11 INACTIVE CASES DISMISSED DURING THE YEAR

County	Jury					Non-Jury					Equity	Divorce and Nullity
	Land Takings	Contracts	Motor Torts	Other Torts	All Others	Land Takings	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	4	32	6	8	0	0	34	1	2	0	42	0
Berkshire	2	19	4	8	6	0	16	1	2	4	49	0
Bristol	2	51	64	29	4	0	42	10	7	12	105	0
Dukes	0	0	0	2	1	0	0	0	0	0	8	0
Essex	8	59	62	33	0	0	39	11	6	6	123	0
Franklin	0	2	8	1	0	0	3	0	0	0	23	0
Hampden	4	60	14	58	0	3	47	9	6	12	0	0
Hampshire	2	6	10	4	2	0	1	0	0	8	28	26
Middlesex	6	31	73	42	0	0	19	14	4	8	79	0
Nantucket	0	1	4	1	0	0	2	0	0	0	0	0
Norfolk	0	8	13	1	0	0	4	0	0	5	2	0
Plymouth	1	32	34	22	1	1	22	4	1	6	164	0
Suffolk	6	120	462	215	39	0	81	54	24	82	398	0
Worcester	2	27	75	35	0	0	29	13	6	3	0	0
Total	37	448	829	459	53	4	339	117	58	146	1,021	26
Combined Totals	1,826					664					1,021	26

Table 12 CIVIL CASES

NUMBER OF DAYS IN WHICH COURT SAT WITH SUPERIOR COURT JUSTICES

Jury Including Land Takings	Non-Jury Including Equity and Motion Session and Land Takings
All Kinds of Cases Contract, Tort and Others with Jury and Land Takings	All Kinds of Cases Contract, Tort and Others without Jury and Land Takings
21½	11
34½	19½
139	32
0	0
278	84
35	4
185	99
38½	2½
635	221
4	2
135	28
87	26
994	820
389*	57
2,975½	1,406
4,381+	

*No District Court Justices sat in Civil Cases.

REPORTS OF REGISTERS OF PROBATE FOR YEAR ENDING DEC. 31, 1955

	Probate Decrees																Divorce			Fees Collected					
	Original Entries	Administrations Allowed	Wills Allowed	Guardians Appointed	Conservators Appointed	Trustees Appointed	Accounts Allowed	Real Estate Sales	Real Estate Mortgages	Real Estate Partitions	Equity Decrees	Separate Support	Desertion and Living Apart	Custody	Other Decrees	Papers Recorded	Original Entries	Decrees and Orders Entered		Probate	Divorce	Certificates and Copies	Total	Commitment, Insane Feeble Minded	Adoption
																		Nisi	Others						
Barnstable	532	155	203	33	18	25	436	105	7	11	7	3	1	2	174	2,682	167	108	23	$5,220 80	$1,235.00	$3,483.65	$9,939.45	1	23
Berkshire	966	320	268	54	31	47	644	123	7	2	17	26	14	7	251	2 938	243	176	91	8,188.00	1,830.00	3,784.50	13,802.50	4	70
Bristol	2,221	794	620	162	67	63	771	416	16	11	17	56	12	7	1,286	7,583	700	511	497	17,095.60	5,331.00	7,827.06	30,253 66	15	135
Dukes	92	27	52	4	3	2	100	16	0	0	1	0	1	2	9	530	16	4	10	872.00	115.00	398.10	1,385.10	0	2
Essex	3,429	1,275	1,041	257	126	182	2,173	624	17	4	32	52	12	13	1,341	9,963	831	589	276	30,190.00	6,218.00	13,406.12	49,814.12	0	210
Franklin	466	121	124	19	32	13	299	60	1	4	0	2	0	2	124	2,543	102	63	45	4,133 50	760.00	1,643.30	6,536.80	2	28
Hampden	2,096	728	552	142	82	57	1,739	260	9	5	98	81	10	13	908	11,550	872	580	953	19,041.00	6,395.00	8,812.80	34,248.80	21	187
Hampshire	538	205	183	46	18	14	410	89	5	1	10	8	3	1	1 068	2,622	70	48	41	4 726.00	485.00	1 897 00	7,108.00	5	25
Middlesex	6,761	2,372	1,952	535	256	335	3,888	930	80	23	70	197	14	34	3,613	17,953	1,653	1,201	1,679	59,723.00	12,215.00	35,204.40	107,142.40	23	506
Nantucket	48	17	22	1	5	2	35	14	0	0	0	0	0	0	9	242	9	9	2	476.00	65.00	139 20	680.20	0	0
Norfolk	2,972	963	1,034	224	123	206	2,266	396	14	18	62	108	1	21	1,842	11,915	544	381	681	29,105.00	4,000.00	17,903.55	51,008.55	13	266
Plymouth	1,466	642	408	106	45	35	912	301	13	14	15	41	7	6	426	7,478	425	265	486	13,056.00	3,205.00	5,117.04	21,378.04	2	129
Suffolk	5,507	2,141	1,118	375	221	226	3,906	587	36	24	102	1,193	16	49	1,963	26,208	1,640	1,047	2,227	50,546.00	11,895.00	24,891.36	87,332.36	1,470	321
Worcester	3,794	1,304	876	312	183	106	1,108	541	24	15	82	184	8	11	1,877	10,925	1,665	743	214	27,262.00	8,315.00	11,413.15	46,990.15	34	228

Pre-trial "Dispositions"

PRE-TRIAL SESSIONS OF SUPERIOR COURT, JULY 1, 1955 TO JUNE 30, 1956

Cases on Pre-Trial List		
Cases Pre-tried	3703	
Cases Not Pre-tried	1309	
		5012
Cases Pre-tried and Settled While Awaiting Trial	446	
Referred to Auditors	396	
Sent to Trial Sessions	2414	
Awaiting Trial	447	
		3703
Cases not Pre-tried		
Settled	660	
Nonsuits	72	
Defaults	58	
Nonsuits and Defaults	14	
Continuances	505	
		1309
Total Pre-Trial "Dispositions"		5012

SUFFOLK COUNTY

Number of Days Pre-trial Sessions Sat—97

Cases on Pre-trial List	5012
Pre-tried	3703
Settled by Agreement	660
Nonsuited	72
Defaulted	58
Disposed of by Nonsuit and Default or Discontinued	14
Referred to auditors	396
Where Jury Was Waived (to trial lists)	599
Continued	505
Cases to Trial Lists (short lists)	1815
Cases From Pre-trial Lists Settled On Trial Lists (short lists)	446

BERKSHIRE COUNTY

Cases on Pre-trial List	84
Pre-tried	54
Settled	27
Defaulted	1
Waived on Jury-waived List	1
Waived on Short List	2
Referred to Auditors	1
Ordered on Auditor List	52

NORFOLK COUNTY

Cases on Pre-trial List	207
Pre-tried	187
Settled	42
Nonsuited	1
Defaulted	3
Nonsuited and Defaulted	0
Referred to Auditors	93
Where Jury Was Waived	21
Continued	39
To Trial List	29
Days of Pre-trial	9

HAMDEN COUNTY

Number of Cases on Pre-trial Lists	825
Number of Cases Pre-tried	510
Groups of Cases Pre-tried	343
Number of Cases Added to Next Pre-trial List	158
Groups of Cases Added to Next Pre-trial List	129
Number of Cases Settled	108
Groups of Cases Settled	88
Number of Cases Defaulted	6
Number of Cases Nonsuited	1
Number of Cases Nonsuited and Defaulted	2
Number of Cases Added to Jury Short List Without Pre-trial Order	6
Number of Cases in Which Jury Trial Was Waived	12
Number of Cases Referred to Auditors	9
Number of Cases Transferred to "Non-Triable Docket"	13

ESSEX COUNTY

There appear to have been 405 cases called for pre-trial of which 134 appears to have been settled, 28 sent to auditors, 16 put on non-triable list and others disposed of in various ways.

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